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HOUSE OF REPRESENTATIVES

COMMITTEE ON THE SELECT COMMITTEE

THIRTY-FIFTH CONGRESS

1857-58

REPORT OF THE SELECT COMMITTEE

IN THREE VOLUMES.

WASHINGTON

JOHN R. SMITH, PRINTER.

1858.

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OF THE

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MADE

DURING THE SECOND SESSION

OF THE

THIRTY-FIFTH CONGRESS:

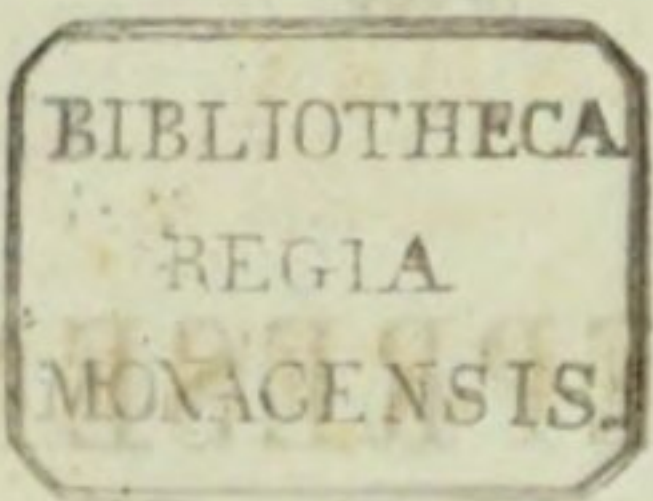
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OF

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THIRTY-FIFTH CONGRESS, SECOND SESSION.

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AMENDMENTS TO THE RULES OF THE HOUSE.

DECEMBER 20, 1858.—Ordered to be printed, and recommitted to the Select Committee on the Rules of the House.

Mr. WINSLOW, from the Select Committee on the Rules of the House, made the following

REPORT.

The Select Committee, appointed at the last session "to digest and revise the rules of order, and to suggest alterations and amendments, and report the same for the action of the House at an early day" in the present session, report the following amendments:

PROPOSED AMENDMENTS.

1. Amend Rule 4 by striking out the last three lines, and inserting after the word "required," in the 4th line, the words, "*by at least one fifth of a quorum of the members.*"

2. Amend Rule 6 by inserting after the word "hall," in the 3d line, the words, "*and the unappropriated rooms in that part of the Capitol assigned to the House shall be subject to his order and disposal until the further order of the House.*"

3. Strike out all of Rule 14, and insert "*There shall be elected at the commencement of each Congress, to continue in office until their successors are appointed, a clerk, sergeant-at-arms, doorkeeper, and postmaster, each of whom shall take an oath for the true and faithful discharge of the duties of his office, to the best of his knowledge and abilities, and to keep the secrets of the House; and the appointees of the doorkeeper and postmaster shall be subject to the approval of the Speaker, and in all cases of election by the House of its officers the vote shall be taken viva voce.*"

4. Strike out Rule 21.

5. Add at the end of Rule 22—" *And all business before committees of the House at the end of one session shall be resumed at the commencement of the next session of the same Congress as if no adjournment had taken place.*"

6. Amend Rule 23 by adding at the end—" *In calling for reports from committees on each alternate Monday, all bills reported during the first hour after the journal is read shall be committed, without debate, to the Committee of the Whole, and, together with their accompanying reports, printed.*"

7. Amend Rule 26 by inserting before the word "resolutions," in the first line, the words "*bills on leave and*" and also by adding at the end "*And the Speaker shall first call the States and Territories for bills on leave, and all bills so introduced during the first hour after the journal is read shall be referred, without debate, to their appropriate committees.*"

8. Amend Rule 30 by inserting after the word "Friday" the words "*and Saturday,*" and by adding at the end of the rule—"but when a bill is again reached after having been once objected to, the committee shall consider and dispose of the same, unless it shall be again objected to by at least five members."

9. Amend rule 50 by striking out all after "January 14, 1840," and inserting, "*but its only effect, if a motion to postpone is pending, shall be to bring the House to a vote upon such motion. Whenever the House shall refuse to order the main question, the consideration of the subject shall be resumed as though no motion for the previous question had been made. A call of the House shall not be in order after the main question is ordered, unless it shall appear upon an actual count by the Speaker, that no quorum is present.*"

10. Amend rule 53 by inserting after the word "question" in the first line, the words "*before or after the main question is ordered.*"

11. Amend rule 67 by striking out from the beginning to and including the words "shall be" in the second line, and inserting: "*It shall be the duty of the Sergeant-at-Arms.*"

12. Amend rule 69 by striking out all after the word "returning" in the 4th line, and inserting, "*not less than ten nor more than twenty cents for every mile actually and necessarily travelled, the amount to be determined by the Committee on Accounts.*"

13. Strike out rule 72.

14. Strike out rule 73.

15. Strike out rule 74.

16. Strike out all of rule 75 and insert: "*The Postmaster shall superintend the post office kept in the Capitol for the accommodation of the members.*"

17. Amend rule 76 by striking out the word "eight" in the first line, and inserting "*seven.*"

Also, by striking out the word "session" in the first line, and inserting the word "*Congress.*"

Also, by striking out on page 178, the words "A Committee on Engraving to consist of three members."

18. Amend rule 78 by striking out the words in brackets.

19. Amend rule 104 by striking out the words: "There shall be appointed a standing committee of this House, to consist of three members, to be called the Committee on Engraving, to whom shall be referred by the clerk," and inserting the words: "*There shall be referred, by the clerk, to the members of the Committee on Printing on the part of the House.*"

20. Strike out rule 118.

21. Amend rule 119 by adding at the end: "*Whenever a bill is reported with a recommendation to strike out the enacting words, and such recommendation is disagreed to by the House, the bill shall stand recom-*

mitted to the Committee of the Whole without further action by the House."

22. Amend rule 120 by adding at the end: "*And should such re-commitment take place after its engrossment, and any amendment be reported by the committee and agreed to by the House, the question shall be again put on the engrossment of the bill.*"

23. Strike out rule 124.

24. Amend rule 130 by striking out from the beginning to and including the word "that," in the 3d line.

25. Amend rule 135 by adding at the end: "*And all debate on special orders shall be confined strictly to the measure under consideration.*"

26. Amend rule 136 by inserting after the word "present" in the 4th line, (page 193,) the words: "*Nor shall the Speaker entertain a motion to suspend the rules except during the last ten days of the session, and on Monday of every week, at the expiration of one hour after the journal is read.*" And also, by inserting after the word "present," in the 8th line, (same page,) the words: "*Make any of the general appropriation bills a special order; and also.*"

27. Strike out rule 137.

28. Amend rule 138 by inserting after the words "Committee on Enrolled Bills," the words: "*and the Committee on Printing.*"

29. Strike out rule 147.

30. Strike out rule 153.

31. Strike out all of rule 154, and insert: "*The bills from the Court of Claims shall, on being laid before the House, be read a first and second time, committed to a Committee of the Whole House, and, together with the accompanying reports, printed.*"

added to the Committee of the House, and the House, by the
 action of the Committee, has decided that the House should
 be informed of the result of the action of the Committee, and
 the House, by the action of the Committee, has decided that the
 House should be informed of the result of the action of the Committee.

23. Strike out rule 134.
 24. Amend rule 130 by striking out from the beginning to and
 including the word "that," in the 2d line.

25. Amend rule 135 by adding at the end: "That the House
 should be informed of the result of the action of the Committee."

26. Amend rule 136 by inserting after the word "passed," in
 the 2d line (page 133) the words: "The House should be informed
 of the result of the action of the Committee." Amend rule 137 by
 inserting after the word "passed," in the 2d line (page 133) the
 words: "The House should be informed of the result of the action
 of the Committee." Amend rule 138 by inserting after the word
 "passed," in the 2d line (page 133) the words: "The House
 should be informed of the result of the action of the Committee."

27. Strike out rule 137.
 28. Amend rule 138 by inserting after the word "passed," in
 the 2d line (page 133) the words: "The House should be informed
 of the result of the action of the Committee."

29. Strike out rule 138.
 30. Strike out all of rule 139, and insert: "That the House
 should be informed of the result of the action of the Committee."

31. Amend rule 140 by striking out from the beginning to and
 including the word "that," in the 2d line (page 133) the words:
 "The House should be informed of the result of the action of the
 Committee."

32. Amend rule 141 by striking out from the beginning to and
 including the word "that," in the 2d line (page 133) the words:
 "The House should be informed of the result of the action of the
 Committee."

33. Amend rule 142 by striking out from the beginning to and
 including the word "that," in the 2d line (page 133) the words:
 "The House should be informed of the result of the action of the
 Committee."

34. Amend rule 143 by striking out from the beginning to and
 including the word "that," in the 2d line (page 133) the words:
 "The House should be informed of the result of the action of the
 Committee."

35. Amend rule 144 by striking out from the beginning to and
 including the word "that," in the 2d line (page 133) the words:
 "The House should be informed of the result of the action of the
 Committee."

36. Amend rule 145 by striking out from the beginning to and
 including the word "that," in the 2d line (page 133) the words:
 "The House should be informed of the result of the action of the
 Committee."

37. Amend rule 146 by striking out from the beginning to and
 including the word "that," in the 2d line (page 133) the words:
 "The House should be informed of the result of the action of the
 Committee."

38. Amend rule 147 by striking out from the beginning to and
 including the word "that," in the 2d line (page 133) the words:
 "The House should be informed of the result of the action of the
 Committee."

39. Amend rule 148 by striking out from the beginning to and
 including the word "that," in the 2d line (page 133) the words:
 "The House should be informed of the result of the action of the
 Committee."

MILES JUDSON.

[To accompany S. Bill 407.]

JANUARY 4, 1859.

Mr. MAYNARD, from the Committee of Claims, made the following

R E P O R T.

The Committee of Claims, to whom was referred Senate bill 407, "for the relief of Miles Judson," have had the same under consideration and beg leave to report:

That after a full and careful examination of the case your committee concur in the report from the Senate Committee on Claims, which they adopt as follows:

The Committee on Claims, to whom was referred the petition of Miles Judson, report:

The petitioner was one of the sureties on the official bond of Andrew D. Crosby, late a purser in the United States navy. Purser Crosby was killed in 1846, while engaged in the duty of piloting the United States steamer Vixen, under the command of Commodore Perry, along the coast of Yucatan. On the settlement of his accounts at the treasury, a balance was found in favor of the United States for the sum of \$3,326 31, for which suit was instituted against the sureties, and judgment recovered, in 1855, against the petitioner, Miles Judson, who subsequently paid into the treasury, through the marshal of the eastern district of Louisiana, in satisfaction of the same, the sum of \$4,320 70, including interest and costs. This application is for the reimbursement of that sum, on the ground that the sudden death of Purser Crosby, in the active discharge of his duty in time of war, must have left his accounts in a deranged condition, and that the presumption, arising from his high character, is, that if he had not been thus deprived of the possibility of properly presenting his accounts and vouchers, no defalcation would have appeared.

A claim was presented to the 29th Congress, in behalf of the representatives of Purser Crosby, to be allowed certain sums alleged to have been paid by him to certain warrant officers of the United States ship Ontario in 1841, and which had been disallowed in the settlement of his accounts with the government. The amount thus claimed was \$550 99. The claim was referred to the Committee on Naval

Affairs of the Senate, who reported in favor of its allowance, but it does not appear that any action was had upon the bill.

During the present session your committee referred the petition of Mr. Judson to the Secretary of the Treasury, with the request that he would cause the committee to be furnished with any information on the files of the department calculated to lead to a proper decision of the merits of the present claim. In answer, the Secretary communicates a statement of the Fourth Auditor, containing a list of items rejected in the settlement of Purser Crosby's accounts, which is among the papers in the case, and sustains the report of the committee in 1847 in favor of allowing the said sum of \$550 99, and also an allowance of several other items in the heretofore rejected accounts of Purser Crosby, amounting to an additional sum of \$218 97.

The committee concur in the opinion expressed by the committee of the 29th Congress in favor of the allowance of the \$550 99 paid to the warrant officers of the Ontario, and with the Fourth Auditor, who thinks that in addition to the above a further sum of \$218 97 on other items should be allowed.

There are amongst the papers lately filed by the agent of Mr. Judson several original vouchers for money paid out by Crosby, and which do not appear ever to have been allowed to him, viz: First, one large table, March 5, 1843, \$15. Second, for freight on specie, May 4, 1843, \$30. Third, for beef, bread, and vegetables purchased for the United States ship Preble, April 12, 1845, \$110 66. These vouchers and purchases appear to have been authorized and approved by the commanding officers of the ships in which Crosby was purser. These make up an additional sum of \$155 66, which ought, in the opinion of the committee, to be allowed.

The Fourth Auditor, in his communication above referred to, admits the propriety of allowing the 26th, 27th, and 28th items of the suspended accounts of Crosby, if there was any evidence that he had ever received the drafts and treasury notes, which are the foundation of these items. Since that letter was received by the committee, the agent of the petitioner has filed the certificate of George Curtis, cashier of the Bank of Commerce, New York, in 1844, stating that Mr. Crosby, as purser of the Ontario, handed him \$9,500 of treasury notes to sell for him, which Curtis sold at a discount of three-fourths per cent., the loss being \$71 25, the identical amount charged in item No. 28, above referred to. There can be no doubt that this item ought to be allowed. In support of the 26th and 27th items, as above, letters of the then Secretary of the Navy, Mr. Upshur, are exhibited, of 9th May and 6th July, 1842, authorizing Mr. Crosby to draw on the department at thirty days' sight for such sums as he might want for the use of the ship, and to negotiate the drafts on the best terms that could be obtained in New Orleans. This is strong presumptive proof in support of these two items, and authorizes the committee to allow them. These three items make the sum of \$271 25, and all added together make up an aggregate sum of \$1,196 87. The committee have no hesitation in saying that, at least, the above sum ought to have been allowed Purser Crosby in the settlement of his accounts; and that as his surety, Mr. Judson, has

been charged interest on the amount of Crosby's liability upon his official bond, it is reasonable and just that interest should be allowed on the above sum from the average period of the various expenditures, which would be about the first of January, 1843. The committee therefore report a bill for the said sum of \$1,196 87, with interest at six per cent. from said date. There are several other items in Purser Crosby's suspended account which the committee have reason to think were just, but as there is no proof to sustain them, they are reluctantly compelled to reject them.

Your committee, therefore, report back the Senate bill with the recommendation that it do pass.

CAPT. J. B. MONTGOMERY.

[To accompany Bill S. 418.]

JANUARY 4, 1859.

Mr. MOORE, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, to whom was referred the Senate Bill No. 418, beg leave to report :

That in the month of June, 1841, John B. Montgomery, a captain in the United States navy, was stationed at Boston as recruiting officer for the navy ; that in the discharge of his duties considerable sums of money had to be drawn and disbursed by him ; that for the safe-keeping of these government funds said Montgomery deposited the same in the Phoenix Bank, at Charlestown, Massachusetts ; that he was led to do this by the fact that said bank had prior thereto been in good standing, deemed entirely safe, and solvent ; that his predecessors and other officers of the government, as well as the United States government itself, had hitherto deposited funds with that institution and sustained no loss thereby. In the exercise of all reasonable care and prudence, this officer made use of this bank as a depository of the government funds, not placing them to his credit, individually, but in his official capacity as recruiting officer.

In the month of October, 1842, the Phoenix Bank failed. Since then several dividends have been paid at sundry times to its creditors, Captain Montgomery included. But after all the assets were exhausted a balance remained due and unpaid of \$91 85, which Captain Montgomery memorializes Congress to refund to him, the same having been charged against him by the accounting officers of the Treasury Department in the settlement of his accounts.

Your committee are unanimously of the opinion that said amount should be passed to his credit on the books of the treasury, as prayed for by said memorialist, and they report a bill accordingly.

CAPT. J. R. MONTGOMERY.

(The accompanying bill is 114.)

JANUARY 4, 1852.

Mr. Moore, from the Committee of Claims, reads the following

REPORT.

The Committee of Claims to whom was referred the bill No. 418, beg leave to report:

That in the month of June, 1841, John R. Montgomery, a captain in the United States Navy, was stationed at Havana as commanding officer for the navy; that in the discharge of his duties considerably more of money had to be drawn and advanced by him; that for the safe-keeping of those government funds paid Montgomery deposited the same in the Phoenix Bank at Charleston, South Carolina; that he was led to do this by the fact that said bank had prior thereto been in good standing, deemed entirely safe, and solvent; that his predecessor and other officers of the government, as well as the United States government itself, had hitherto deposited funds with that institution and sustained no loss thereby. In the exercise of all reasonable care and prudence, this officer made two of this bank as a depository of the government funds, not placing them to his credit individually, but in his official capacity as recruiting officer.

In the month of October, 1842, the Phoenix Bank failed. Since then several dividends have been paid at sundry times to its creditors. Captain Montgomery included. But after all the assets were exhausted a balance remained due and unpaid of \$21 82, which Captain Montgomery memorialized Congress to return to him, the same having been charged against him by the accounting officers of the Treasury Department in the settlement of his accounts.

Your committee are unanimously of the opinion that said amount should be passed to his credit on the books of the treasury, as prayed for by said memorialist, and they report a bill accordingly.

GEORGE W. FLOOD.

[To accompany Bill S. 266.]

JANUARY 4, 1859.

Mr. MOORE, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, to whom was referred Senate Bill 266, "for the relief of George W. Flood," have had the same under consideration, and beg leave to report :

The claimant was a messenger in the office of the Bureau of Topographical Engineers, and while holding this appointment he discharged the duties usually assigned to a clerk. Colonel Abert says, he was employed "in keeping a record of letters and in copying of documents," and recommends that he be allowed extra pay; but the Secretary of War says, "the necessity for the services performed was not known to the department, nor is it apparent now; and the claim does not, therefore, meet its approbation." This your committee think is decisive of the case. Surely the heads of bureaus have no power to assign clerical duties to whomsoever they please, and then send those persons to Congress with their petitions for extra compensation. If this practice be recognized, our laws regulating the clerical force of the government would become a mere nullity. And, independent of this objection, there is nothing in this case that would justify a departure from the general practice of not allowing these claims for extra compensation. Your committee, therefore, report back the bill, with the recommendation that it do not pass.

GEORGE W. FLOOD.

(The Honorable Member for the County of Essex.)

January 4, 1865.

Mr. Speaker, from the Committee of Affairs, reads the following

REPORT.

The Committee of Affairs, to whom was referred the bill for the relief of George W. Flood, have had the honor to receive and consider the same, and beg leave to report.

The chairman was a messenger in the office of the Bureau of Topographical Surveys, and while holding the appointment he discharged the duties usually assigned to a clerk. Colonel Abbott says, "he was employed in keeping a record of letters and in copying documents," and recommends that he be allowed extra pay; but the Secretary of War says, "the necessity for the services performed was not known to the department, nor is it apparent now; and the claim does not, therefore, meet its requisition." The Joint Committee think it desirable of the case, though the heads of bureaus have no power to assign clerical duties to whomsoever they please, and that such those persons to Congress with their positions for extra compensation. If this practice be recognized, our laws regulating the clerical force of the Government would become a mere nullity. And, independent of this objection, there is nothing in this case that would justify a departure from the general practice of not allowing them claims for extra compensation. Your committee, therefore, report back the bill, with the recommendation that it do not pass.

SAMUEL H. TAYLOR.

[To accompany S. Bill 306.]

JANUARY 4, 1859.

Mr. GOODWIN, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, to whom was referred the Senate Bill 306, for the relief of Samuel H. Taylor, have had the same under consideration and beg leave to report:

The facts in this case being fully detailed in the Senate's report, your committee adopt the same, merely adding that they deemed it proper to call on the Secretary of the Treasury for a report of the case. That officer, under date of June 4th, says: "Had such a case arisen under my administration I should have felt bound to make fair compensation for the increased services if a sufficient appropriation for the purpose was under my control."

The committee, therefore, report back the bill and recommend its passage.

REPORT

OF THE

COMMISSIONERS

OF THE LAND OFFICE

REPORT

ON THE PROGRESS OF THE LAND OFFICE
DURING THE YEAR 1861

The first of the two parts of the report
contains a statement of the progress
of the land office during the year
1861. The second part contains
a statement of the progress of the
land office during the year 1862.

WILLIAM HAZZARD WIGG.

[To accompany S. Res. No. 52.]

JANUARY 4, 1859.

Mr. MOORE, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate Resolution No. 52, have had the same under consideration, and beg leave to report :

That by reference to House Reports, 1st session of the 32d Congress, No. 176, on 4th page, they find that there was a clerical error in the statement of the account of William Hazzard Wigg, amounting to the sum of fifteen hundred and sixty dollars, and they report back the said Senate resolution and recommend its adoption.

WILLIAM HAZARD WING

Representative in the 24th Session

JANUARY 1, 1859

Mr. Moore, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate Resolution No. 22, have had the same under consideration, and beg leave to report:

That by reference to House Report, 2d Session of the 24th Congress, No. 176, on 21st page, they find that there was a clerical error in the statement of the account of William Hazard Wing, amounting to the sum of fifteen hundred and sixty dollars, and they recommend that the said Senate resolution and recommendation be adopted.

WILLIAM MONEY.

[To accompany Bill S. 398.]

JANUARY 4, 1859.

Mr. JACKSON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill No. 398, "for the relief of William Money," have had the same under consideration, and beg leave to report:

That the claim was examined by the Senate Committee on Foreign Relations, at the first session of the 32d Congress, who made a report thereon, which your committee, after a careful examination, fully concur in and adopt, as follows:

IN THE SENATE OF THE UNITED STATES, *May 27, 1852.*

The Committee on Foreign Relations, to whom the memorial of William Money was referred, report:

That the memorialist claims compensation for forty-five horses seized under the orders of General Kearney in California, and for other articles lost, as he avers, in consequence of the conduct of the troops under the command of said Kearney. The horses are valued at \$100 each. The memorialist alleges that he had been engaged for many years as a naturalist, in exploring California, studying the geology, geography, and productions of the country, with a view to publish the information accumulated by his observations and researches; and that he had compiled a large manuscript volume, containing many drawings, paintings, and maps, which was worth \$10,000. He says he had instruments connected with his scientific investigations in natural history worth \$320, and personal baggage and provisions worth \$680. He states that in November, 1846, he left the town of Los Angeles for Sonora, and having reached an Indian village, called Howargo, was there deprived of his horses by the troops under the command of General Kearney, and thus deprived of the means of pursuing his journey or of returning. He moreover states, "that information having been given by General Kearney's troops to those Indians and to the neighboring tribes, that the country was under the American flag, and that

it became the duty of those Indians to aid and assist in the American cause, and to prevent the passage of all persons from the settlements to Sonora, it was a sufficient incentive to the Indians for the exercise of their natural inclination for pillage; and after the departure of the troops of General Kearney the Indians took prisoners the whole of the memorialist's party, and commenced an indiscriminate plunder of the property and baggage of the memorialist, and in a few moments totally destroyed all the valuable manuscripts, drawings, maps, and interesting documents, the result of more than twenty years' arduous labor, and upon which the memorialist placed his sole dependence for his future maintenance.

The memorialist also mentions the sufferings to which his wife was subjected in consequence of his losses. His statements on this subject present a case of female suffering of very aggravated character, and well calculated to make a deep impression on the sensibilities of the heart.

The committee, after due deliberation, have determined to report a bill authorizing an inquiry into the truth of the allegations of the petition, and to provide for the payment of as many of the horses of the petitioner as were taken under the orders of General Kearney and appropriated to the service of the United States.

The committee would have reported a bill for the immediate payment to the petitioner of the value of the horses claimed by him, but for certain circumstances which have in a great degree thrown suspicion upon the whole claim, and which the committee deem proper to state. The affidavits, which prove the value of the horses and the property, state, in words written at length, the value of the articles. It appears, from the inspection of the affidavits, that the value for each horse was first written *forty* or *fifty dollars*, and that the word "*forty*" or "*fifty*" has been erased, and 100, in figures, inserted in its place, preceding the word "dollars." It is clear that the word erased was *forty* or *fifty*, but which cannot be distinctly told. At the time General Kearney invaded California, the committee has ascertained from various sources that the usual price for the best horses in California did not exceed the price of \$25 per head, on an average. It seems to the committee that the valuation put upon the horses by the witnesses whose affidavits are filed was very extravagant, compared with reliable information obtained from other sources; but when the valuation as originally written in the affidavits has been erased and figures inserted doubling the price, such fact brings a just suspicion upon the whole claim.

The committee perceive no ground, no proof, upon which the government of the United States can justly be made responsible for the depredations committed by Indians in the manner stated. There is no evidence that General Kearney or any of his officers or men gave directions to the Indians to make prisoners of the memorialist and his family, or depredate on his property. Nor does the committee perceive that the loss of the manuscripts, &c., &c., was a necessary consequence of the seizure of the horses. Thieves may have stolen the property, even if the horses had not been taken. The damage complained of for the loss of all the property, except the horses, is

too contingent and uncertain to constitute a valid claim against the government. Moreover, the committee have no means of forming a judgment in regard to the value of the maps, drawings, manuscripts, &c., said to have been destroyed by the Indians. Some samples of the talent of the memorialist which have been exhibited to the committee do not produce any favorable opinion of the value of manuscripts, &c., said to be destroyed.

The committee therefore report back the bill and recommend its passage.

REPORT.

too sanguine and certain to constitute a valid claim against the Government. However, the Committee have no reason of doubting a judgment in regard to the value of the paper, drawings, manuscripts, &c., said to have been deposited by the Indians. Some examples of the interest of the illustrations which have been exhibited to the Committee do not produce any favorable opinion of the value of the manuscript, said to be destroyed.

The Committee therefore report back the bill and recommend its passage.

Now the bill shall be reported to the Senate. It is not probable that it will be passed, but it is not probable that it will be rejected. It is not probable that it will be passed, but it is not probable that it will be rejected. It is not probable that it will be passed, but it is not probable that it will be rejected.

Proper of historical work, and the Committee have no objection to its being made a part of the collection. It is not probable that it will be passed, but it is not probable that it will be rejected. It is not probable that it will be passed, but it is not probable that it will be rejected.

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TIMOTHY MOORS—FATHER AND HEIR-AT-LAW OF.

[To accompany Bill H. R. 749.]

JANUARY 4, 1859.

Mr. J. G. DAVIS, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom was referred the memorial of David Moors, father and heir-at-law of Timothy Moors, deceased, of Hillsboro', New Hampshire, report:

That it appears from the evidence produced that the said Timothy Moors, deceased, enlisted in the marine service of the United States, in the war with Mexico, in the battalion of marines commanded by Major Harris, on the 24th day of April, 1845, at Boston, Massachusetts. That he continued in actual service until the 27th day of July, 1848, when he was discharged, at his own request, at Gosport, Virginia, on account of chronic diarrhœa, which he contracted while in the service; that he returned home immediately after his discharge, and was never able to perform any labor afterwards; that he gradually sunk under said disease until about the 23d day of November, 1848, when he died of the said disease at Mason, New Hampshire. That during his service he was promoted to the office of corporal, which he held at the time of his discharge from the service. That the said David Moors is the father of the said Timothy Moors, deceased, and that the said Timothy Moors died having neither wife nor children surviving him.

Your committee, therefore, report a bill granting to the said David Moors, as the heir of said Timothy Moors, deceased, 160 acres of land, and recommend its passage.

TIMOTHY MOORS—FATHER AND WIFE AT-LAW OF

—To accompany H. R. 7151—

JANUARY 4 1858

Mr. J. G. Davis, from the Committee on Public Lands, reads the following

REPORT.

The Committee on Public Lands, to whom was referred the memorial of David Moore, father and wife of Timothy Moore, deceased, of Middlebury, New Hampshire, report:

That it appears from the evidence presented that the said Timothy Moore, deceased, enlisted in the marine service of the United States, in the war with Mexico, in the battalion of marines commanded by Major Harris, on the 25th day of April, 1846, at Boston, Massachusetts. That he continued in actual service until the 27th day of July, 1848, when he was discharged, at his own request, at Newport, Virginia, on account of chronic dysentery, which he contracted while in the service; that he returned home immediately after his discharge, and was never able to perform any labor afterwards; that he died, of an aneurism, on the 23d day of November, 1857, when he died of the said disease at Middlebury, New Hampshire. That during his service he was promoted to the office of corporal, which he held at the time of his discharge from the service. That the said David Moore is the father of the said Timothy Moore, deceased, and that the said Timothy Moore died intestate, neither wife nor child surviving him.

Your committee, therefore, report a bill granting to the said David Moore, as the heir of said Timothy Moore, deceased, 160 acres of land, and recommending its passage.

NANCY D. HOLKAR.

JANUARY 4, 1859.—Laid upon the table and ordered to be printed.

Mr. Cox, from the Committee on Revolutionary Claims made the following

REPORT.

The Committee on Revolutionary Claims, to whom was recommitted the memorial of Nancy D. Holkar, widow and administratrix of John Holkar, beg leave to report:

That upon information which reached the committee after the report made February 3, 1858, the committee, through their chairman, asked that the case might be recommitted. This information threw a shade over the case made, and made too, so as to be almost irrefragible. On full and further inquiry, it appears from other books of the Treasury Department that this claim had been settled.

The committee therefore report adversely, and ask to be discharged from its further consideration.

NANCY D. MOKKAR

January 4, 1857.—Laid upon the table and ordered to be printed.

Mr. Cox, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was recommended the memorial of Nancy D. Mokkar, widow and administratrix of John Mokkar, beg leave to report:

That upon information which reached the committee after the report made February 2, 1858, the committee, through their chairman, asked that the case might be recommended. This information threw a shade over the case made, and made too, so as to be almost irresistible. On full and full inquiry, it appears from other books of the Treasury Department that this claim had been settled. The committee therefore report adversely, and ask to be discharged from its further consideration.

MARYETT VAN BUSKIRK.

[To accompany Bill H. R. No. 751.]

JANUARY 4, 1859.

Mr. Cox, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom were referred the petition and papers of Maryett Van Buskirk, heir of Thomas Van Buskirk, respectfully report :

That they have examined this case with great care, and they unanimously concur that the facts set forth by the petitioner are fully sustained by the evidence.

It appears that the petitioner, Maryett Van Buskirk, is the lineal descendant of Thomas Van Buskirk, who was in his lifetime a citizen of Bergen county, New Jersey. That during the period of our revolutionary struggle he was a wealthy farmer and grazier, and a man of great influence. The evidence before your committee shows, that he was one of the most ardent whigs of the revolution, and in a community where a large part of the population was hostile to the American cause. It further appears from the evidence and certificates on file, that the American troops at different times, under the command of Generals Wayne, Greene, and other officers, during the period ranging between the years 1777 and 1780, encamped at Harrington, (or Peramus, as sometimes called,) in said county and State. In the latter years, the winter of 1779-'80, General Washington with the main army were encamped at Morristown, near by. When your committee state that, as early as the year 1777, dates the poverty and extreme wants of the army, and the prostration of the credit of the government, they state facts known to all men. It abundantly appears by the evidence that from this time, while our army was in winter quarters at Valley Forge, until the year 1780, the said Thomas Van Buskirk was frequently applied to by the several officers commanding the American troops for supplies of cattle, horses, forage, grain, and other necessary articles, all of which he furnished ; and he frequently purchased articles from others with his own money, to enable him to supply the army. The difficult task of obtaining supplies at this time, and in a part of the State notoriously disaffected ; the resort to

force by our officers to obtain them under the command of a resolution of Congress, are facts known in history. The evidence establishes the fact that it was during this time that the ancestor of the petitioner, Thomas Van Buskirk, furnished these supplies, as the evidence shows, with cheerfulness and alacrity. It is also proven that when the British had possession of Philadelphia in 1778, and Colonel Lee had been sent into New Jersey to carry off and destroy all that otherwise might fall into the hands of the enemy, in order to cut off their supplies; among those that suffered in this expedition was the said Thomas Van Buskirk, who cheerfully gave up what he had.

It appears that he seldom was paid in money for his property, but instead received certificates, executed by the several officers in command, as proven by the depositions of parties who saw the officers sign many of the same. One of the witnesses, examined on the 1st day of December, 1854, says that he was then ninety-six years of age, and that he saw Col. Lee, subscribe certificates Nos. 3 and 5, and that he saw the property described in the certificates Nos. 1, 2, and 7 delivered to Major Tilgham. The following are copies of two of said certificates:

BERGEN, NEW JERSEY, *February* 19, 1778.

Thomas Van Buskirk, esq., of Paramus, has contributed voluntarily cattle, horses, grain, flour, forage, and cloth for the public service to the value of two thousand three hundred and seventeen dollars, for which this is his claim upon Congress, with interest, to be paid in hard money.

ANTHONY WAYNE,
Brig. Gen. U. S. A.

PARAMUS, NEW JERSEY, *December*,
[Date uncertain being defaced, 1777 or 1779.]

I certify that Thomas Van Buskirk has supplied the American army with beeves, three horses, forage, flour, and other articles, to the sum of twelve hundred and fifty dollars, for which the Congress of the United States is chargeable in specie currency, and interest payable in like manner.

THOMAS MIFFLIN,
Quartermaster Gen. U. S. A.

It is satisfactorily proven that the amount of supplies of every kind thus furnished by Thomas Van Buskirk to the American army, with those destroyed by Col. Lee, amounted to the sum of twenty thousand three hundred and sixty seven dollars, which is covered by the said certificates of the American officers and still remain unpaid.

The said Thomas Van Buskirk died in March, 1811, while the

country was yet poor, without having presented his claim for payment. On several occasions, when requested to do so by his friends, he declined, assigning as his reason that his country had not recovered from the embarrassments occasioned by the struggle for independence, and that it required the money more than he did, at the same time he expressed his conviction that the debt would at a future day be paid to his heirs.

Your committee have no doubt of the facts set forth in the petition, and which are fully established by the said certificates, and the depositions on file. They state the amounts due, and promise payment with interest, and it is abundantly proven that up to the death of the said Thomas Van Buskirk he retained these memorials with a fondness and tenacity known only to the patriots who lived in the day that tried men's souls. It is proven by several witnesses who were around his death bed, that the last evidence of his consciousness was his request to see these proofs of his services to his country.

The petitioner, the lineal descendant of said Thomas Van Buskirk, and his heir-at-law, now presents this demand for payment, and your committee, fully recognizing the obligation of the government to pay claims so just in their character, and so satisfactorily established, have unanimously come to the conclusion that the gross amount of said certificates, above specified, ought to be paid, and your committee therefore report the accompanying bill.

THEOPHILE BRUQUIER.

JANUARY 4, 1859.—Committed to a Committee of the Whole House, and ordered to be printed.

Mr. GREENWOOD, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the memorial of Theophile Bruquier, a citizen of the State of Iowa, praying compensation for property alleged to have been stolen by a band of the Sioux Indians, have instructed me to make the following report :

It appears from the memorial and the reports of the Indian agents referred to, that those Indians who were charged with appropriating the property of the memorialist, subsequently in council recommended payment for whatever amount of property it might be satisfactorily proven had been taken. The proofs were submitted to the Commissioner of Indian Affairs, and the sum of four thousand nine hundred dollars was paid to the claimant. The sum now asked for is almost entirely for consequential damages, which your committee are of opinion should never be allowed, unless under extraordinary circumstances. No good reason appearing to the committee to justify a departure in this case from this rule, they report adversely.

THE ANTHROPOLOGICAL INSTITUTE

THE ANTHROPOLOGICAL INSTITUTE OF GREAT BRITAIN AND IRELAND
was founded in 1871, and has since that time been engaged in the study of the human race, and in the collection and classification of the various races of man.

The Institute has since its foundation been engaged in the study of the human race, and in the collection and classification of the various races of man.

REPORT

The Institute has since its foundation been engaged in the study of the human race, and in the collection and classification of the various races of man.

It appears from the minutes that the Institute has since its foundation been engaged in the study of the human race, and in the collection and classification of the various races of man.

The Institute has since its foundation been engaged in the study of the human race, and in the collection and classification of the various races of man.

The Institute has since its foundation been engaged in the study of the human race, and in the collection and classification of the various races of man.

DR. JOHN WORK.

JANUARY 4, 1859.—Laid upon the table and ordered to be printed.

Mr. BUFFINTON, from the Committee on Military Affairs, submitted the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Dr. John Work, of Woodville, Tyler county, State of Texas, respectfully report:

The memorialist served eight months in the war with Mexico as an assistant surgeon, by contract made with Lieutenant Colonel P. H. Bell, commanding the frontier troops of Texas. His present application is for three months' extra pay.

The act of Congress approved July 19, 1848, granted "three months' extra pay to all officers, non-commissioned officers, musicians, and privates," who served in the war with Mexico; but, on the 23d of March, 1849, the Secretary of War decided that surgeons who attend the volunteer regiments as part of the staff, but who were not appointed as provided by law, could not be considered officers of the army, and were not, therefore, entitled to this extra pay.

The act of the 18th of June, 1846, provides that the President, by and with the advice and consent of the Senate, may appoint for each regiment of volunteers one surgeon and one assistant surgeon. The persons thus appointed, and they only, can be considered officers. The authority for the employment of subsidiary aid may be found in the Army Regulations, paragraph 1,220: "When medical or surgical aid is required, if no surgeon or assistant surgeon of the army be at or near the place, the senior officer will employ a private physician by special agreement in writing, a duplicate of which will be immediately transmitted to the surgeon general for approval. All such agreements will be made for a specified sum per month, *without any allowance or emoluments.*"

The manner of service, and the utmost limit of compensation, are here distinctly stated—allowances and emoluments, such as the extra pay in question, are refused by the very regulation which provides for extraordinary medical duty; and your committee do not see fit to go behind the line of proper precedent in the matter. They beg, therefore, to offer an adverse report.

*To the honorable Senate and House of Representatives of the United States
in Congress assembled :*

Your memorialist, Doctor John Work, of Woodville, Tyler county, State of Texas, would respectfully represent to your honorable bodies that he served eight months in the war with Mexico as an assistant surgeon, by contract made with Lieutenant Colonel P. Hansbrough Bell, commanding the frontier troops of Texas, hereunto annexed and making part hereof, marked A.

He would further set forth that the Congress of the United States passed a law, approved July 19, 1848, granting "three months' extra pay to all officers, non-commissioned officers, musicians, and privates," who served in said war.

That he made application for said extra pay, (as did others similarly situated;) it was denied to him and other "assistant surgeons" in the volunteer service, on the ground that they do not hold commissions from the President of the United States.

Your memorialist would respectfully call your attention to the letter of the Second Comptroller, E. J. Phelps, on this subject, made part hereof and marked B.

Believing that by the spirit and equity of the law aforesaid, that himself and brother assistant surgeons are entitled to said extra pay, your petitioner most respectfully asks for the passage of a law declaring them entitled to receive the same according to the face of their several contracts.

All of which is most respectfully submitted by your memorialist for himself and others similarly situated.

JOHN WORK.

N. B. Your memorialist would beg to further state that the law aforesaid was passed one year and a half, or more, after the date of the contract aforesaid, and that the clause in said contract debarring him from all "allowances and emoluments whatsoever" referred to existing laws and not to a law afterwards to be passed.

May he not ask, was not the extra pay act passed as some indemnity to those who gave up their *homes* and business and engaged in a distant and dangerous service? and may he not further ask, is not the surgeon as necessary and his services as patriotic as others who served in that war? All of which is most respectfully submitted by your petitioner.

JOHN WORK.

WASHINGTON, D. C., *December 23, 1857.*

A.

Contract with Doctor Work.

This contract, entered into this first day of December, 1847, at San Antonio, State of Texas, between P. Hansbrough Bell, lieutenant colonel first regiment Texas mounted volunteers, commanding the

frontier troops of Texas, and Dr. John Work, of Galveston, Texas, witnesseth: That, for the consideration hereafter mentioned, the said Dr. John Work promises and agrees to perform the duties of an assistant surgeon, agreeably to Army Regulations, at the military station at the Presido of the Rio Grande, or wherever required; and the said Lieutenant Colonel P. Hansbrough Bell promises and agrees, on behalf of the United States, to pay or cause to be paid to the said Dr. Work the sum of eighty-five dollars for each and every month he shall perform the duties above stated, which shall be his full compensation, and in lieu of all allowances and emoluments whatsoever, except for medicines that he may furnish, which shall be at the rate prescribed by 1,222d paragraph of the Army Regulations. This contract to continue in full force during the pleasure of the parties.

P. HANSBROUGH BELL, [L. S.]
JOHN WORK, [L. L.]

Signed, sealed, and delivered, in presence of—

J. F. SWIFT,
JOHN A. VEATCH.

I certify that the number of persons entitled to medical attendance at the military station of the Presido of the Rio Grande is 84, belonging to the company of Captain John A. Veatch, and that no competent physician can be obtained at a lower rate.

P. HANSBROUGH BELL,
Lieutenant Col. Commanding Texas Frontier.

In two or three weeks after the within contract was made, Captain Veatch increased his command to ninety-five (95) men.

Approved:

H. L. HEISKELL,
Acting Surgeon General.

SURGEON GENERAL'S OFFICE,
June 18, 1857.

The above is a true copy of the recorded copy in the office of the surgeon general.

R. C. WOOD,
Surgeon U. S. A., in charge of office.

Paid under this contract, from December 1, 1847, to July 31, 1848, six hundred and eighty dollars.

TREASURY DEPARTMENT,
Second Auditor's Office, June 29, 1857.

I certify that the foregoing is a correct copy of an instrument filed this day in this office by Dr. John Work, late of the Texas volunteers.

T. J. D. FULLER, *Auditor.*

A true copy:

JOHN WORK.

B.

SECOND COMPTROLLER'S OFFICE,

February 12, 1852.

SIR: I herewith return certificate settlement No. 16,334, in favor of Ware S. May, late surgeon in the 2d regiment mounted volunteers without approval.

The act of June 18, 1846, provides that the President, by and with the advice and consent of the Senate, may appoint for each regiment of volunteers one surgeon and one assistant surgeon. No other authority exists for the appointment of officers of this description, beyond those belonging to the regular medical department of the army.

Dr. May was not so appointed, as appears from the communication from the adjutant general's office, herewith enclosed.

On the 23d of March, 1849, the Secretary of War decided, on application by the paymaster general, that surgeons who attended the volunteer regiments as part of the staff, but not appointed as provided by law, were not officers of the army, and were not entitled to the three months' extra pay. I believe his decision has since been acted on, and I regard it as correct. It of course excludes the present claim.

I add, in *justice* to the claimant, that he is, no doubt, *equitably* entitled to this allowance, inasmuch as he served through the whole period of enlistment of his regiment in the same manner as though regularly appointed, and no other surgeons were appointed to that regiment by the President.

His *remedy*, however, must be by application to *Congress*.

Very respectfully, sir, your obedient servant,

E. J. PHELPS, *Comptroller*.

Hon. P. CLAYTON, *Second Auditor*.

TREASURY DEPARTMENT,

Second Auditor's Office, December 18, 1857.

I certify that the above is a copy of the Second Comptroller's decision in the case referred to.

T. J. D. FULLER, *Auditor*.

C.

STATE OF TEXAS, *County of Jasper*.

On this 8th day of September, 1856, personally appeared before me, a justice of the peace in and for the county and State aforesaid,

Joseph Marion Childers and William A. Dean, both citizens of Jasper county, Texas, who, being duly sworn according to law, make oath that they both were privates in Captain John A. Veatch's company (D) of Texas twelve months mounted men, and that John Work was a private in said company; that they were all duly mustered into said company on the 20th day of October, 1847, at Wolf creek, in Tyler county, State of Texas; that they all marched with said company to the headquarters, at San Antonio, Texas, a distance of about three hundred and fifty miles; that the said John Work did all the duties of a private on said march, and answered to his name at roll-call as a private; that shortly after reaching headquarters, to wit, some time about the 1st December, 1847, the said Work was employed by Lieutenant Colonel Bell as surgeon to said company; that he marched with said company to the Rio Grande in that capacity, and continued to serve for several months; that he marched about the 1st of April, 1848, with a scout of about forty men of said company, under the command of William B. Gray, of said company, who was placed in command by the commanding officer, they both being members of said scout; that after being out some three or four days they came up with a company of Comanche Indians, and that the said Gray placed the said Work in command of ten men, of whom the affiants were two, and that the said Work did charge upon said Indians, and assisted in the battle with them, by charging between them and their horses and mules, and cutting them off from the same; that said Childers and Dean were both in said battle, and under the immediate command of the said Work; that the said Indians at the time were hostile to the United States.

JOSEPH MARION CHILDERS,
WILLIAM A. DEAN.

Subscribed and sworn to before me the day and date above written.

B. F. MOTT, *J. P.*,
Jasper county, Texas.

WASHINGTON CITY, D. C.,
September 15, 1857.

This is to certify that the above is a true copy of the original affidavit of Joseph Marion Childers and William A. Dean, now on file in the office of the Commissioner of Pensions.

GEORGE C. WHITING,
Commissioner.

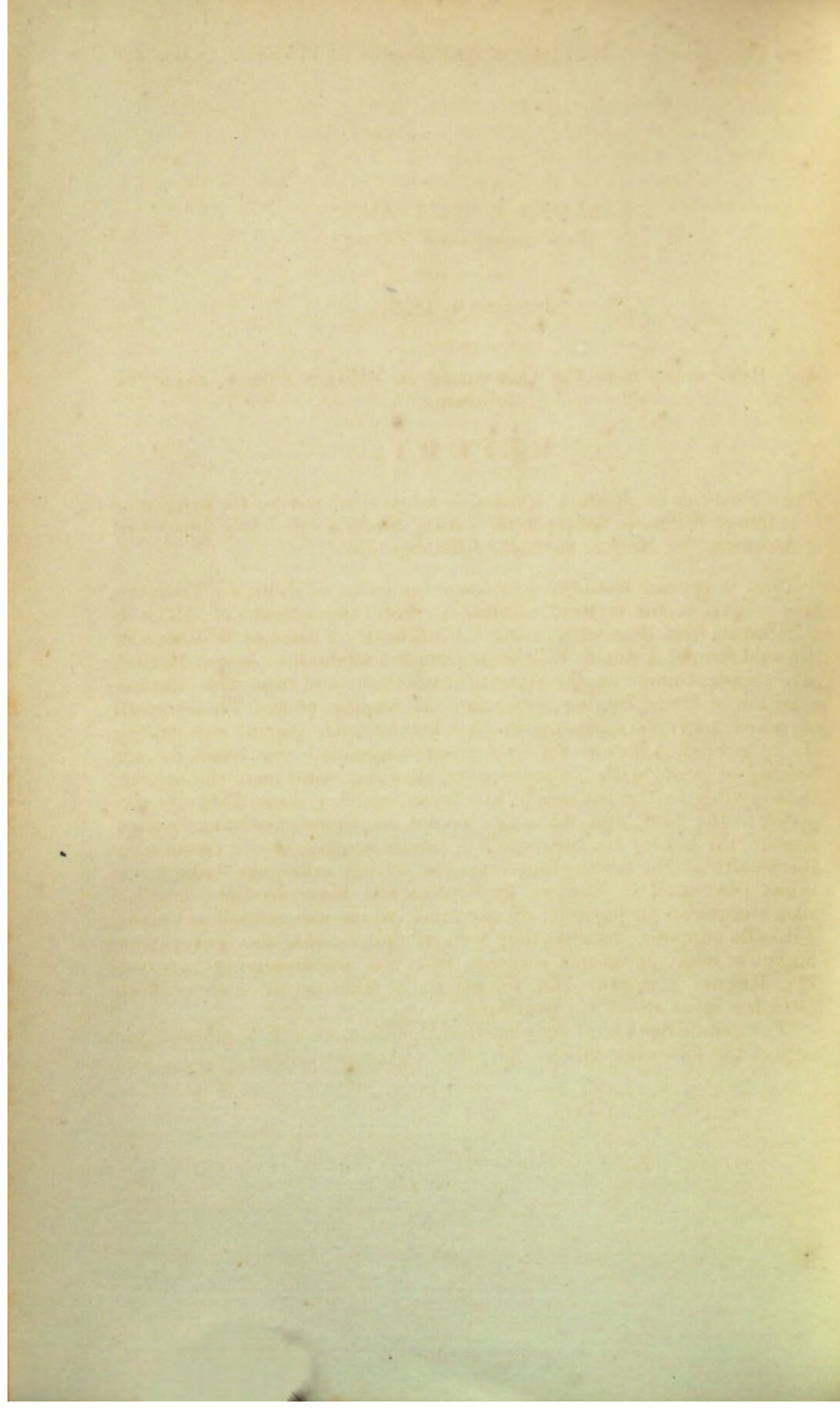
George M. Jones, Esq., New York, N.Y., is hereby notified that the
Library has received from the New York Public Library, the
following books, which have been purchased by the Library, and
which are now on hand, and are available for the use of the
public. The books are as follows: [The following list of books
is omitted due to extreme faintness of the text.]

JOSEPH ALFRED CHILDS
WILLIAM A. JONES

JOSEPH ALFRED CHILDS
WILLIAM A. JONES

JOSEPH ALFRED CHILDS
WILLIAM A. JONES

JOSEPH ALFRED CHILDS
WILLIAM A. JONES



ALDEN & WILLIAMS.

[To accompany Bill H. R. 752.]

JANUARY 4, 1859.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Alden & Williams, bakers to the United States forces while engaged at Monterey, in Mexico, make the following report:

That it appears from the accompanying letter of John W. Tibbatts, late colonel of the sixteenth infantry; from the account of Alden & Williams, filed therewith; from the affidavit of George Williams of the said firm of Alden & Williams; from the affidavit of James McKee, late sergeant major of the sixteenth infantry; and from the communication of Peter Hagner, esq., late 3d Auditor of the Treasury, all of which papers accompany, and are hereby made part of this report, (to be published herewith,) that an arrangement was made for the baking of bread with the petitioners, then in possession of the bakery; that owing to the badness of the bread, which Colonel Tibbatts imputes to the flour, and not to the bakers, he deemed the entire possession of the bakery (in the council of administration) to be essential to the health of the troops, and therefore by his order the bakery was taken possession of; that an application was made to the council of administration for payment of the same, which was refused as Colonel Tibbatts supposes, because they were of opinion that the government ought to make payment; whereas, from the accompanying report of Mr. Hagner, it appears that the council of administration should have paid the same out of the post fund.

The committee are of opinion that the claim should be allowed, and report the following bill for the relief of the petitioners.

ALDEN & WILLIAMS
[The accompanying bill is 101]

JANUARY 4, 1861.

Mr. BUTTICK, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Alden & Williams, petitioners to the United States for relief against the Secretary of War, make the following report:

That it appears from the accompanying letter of John W. Tibbatts, late Colonel of the sixteenth Infantry; from the account of Alden & Williams, filed therewith; from the affidavit of George Williams of the said Alden & Williams, from the affidavit of James McKee, late sergeant major of the sixteenth Infantry; and from the communication of Peter Hagner, esp., late 3d Auditor of the Treasury, all of which papers accompany, and are hereby made part of this report, (to be published herewith,) that an arrangement was made for the taking of bread with the petitioners, then in possession of the bakery, that owing to the badness of the bread, which Colonel Tibbatts intended to the flour, and not to the bakery, he deemed the entire possession of the bakery (in the council of administration) to be essential to the health of the troops, and therefore by his order the bakery was taken possession of; that an application was made to the council of administration for payment of the same, which was refused as Colonel Tibbatts supposed, because they were of opinion that the Government ought to make payment; whereas, from the accompanying report of Mr. Hagner, it appears that the council of administration should have paid the same out of the post fund.

The committee are of opinion that the claim should be allowed, and report the following bill for the relief of the petitioners.

S. L. FREMONT.

JANUARY 4, 1859.—Laid on the table and ordered to be printed.

Mr. PENDLETON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of S. L. Fremont, late lieutenant in the 3d artillery, United States army, now report:

The memorialist was on the steamer San Francisco at the time she was wrecked; and by that casualty lost much personal property, consisting of furniture, bedding, and clothing for himself and family, necessary for their comfort during the period he should be on the Pacific coast. He had been ordered to go to his post on that vessel, and had received permission to take with him his family, and articles necessary for their use. He avers that the vessel was unseaworthy; that her unseaworthiness was the cause of her loss; and that it was known to the petitioner and the officers of the government at the time the order to go on her was given; and upon this alleged state of fact he claims to be paid the value of the above mentioned property.

On the 28th of March, 1854, Congress passed a law allowing to each of the sufferers by the wrecking of the said vessel eight months' pay and allowances; and under this law the petitioner has received \$864 20, which was intended to be full compensation for all the losses and inconvenience from the accident, to which the petitioner was subjected by the order of the government.

The case, made in the memorial, is unsupported by evidence. This would be sufficient reason for its rejection.

If, however, the case were fully established, the committee could then perceive no obligation on the part of the government to reimburse to the petitioner his loss.

The property was on the steamer by permission of the government, not by its order, for the benefit and convenience of the petitioner, not of the government. It was there, then, at his risk, not at the risk of the government. If both the petitioner and the officers of the government were ignorant of the defect of the vessel, it was one of those unfortunate events, in which the loss rests where it happens to

fall. If both knew of its existence, ordinary prudence would have suggested to the petitioner the propriety, either of leaving his property to be forwarded by a safer means of conveyance, or of insuring it with those whose business it is to take such risks.

The committee is of the opinion that the relief prayed should not be granted.

IN THE HOUSE OF REPRESENTATIVES, *May 23, 1856.*

Mr. DENVER, from the Committee on Military Affairs, made the following report:

The Committee on Military Affairs, to whom was referred the memorial of S. L. Fremont, late a lieutenant in the 3d artillery, U. S. A., respectfully report:

The memorialist was one of the officers of the army who was on board of the ill-fated steamer San Francisco, bound to his post of duty, at the time she was wrecked. Accompanying him was his family, for the accommodation of which, during his long tour of duty, he was carrying with him what he alleges was a necessary amount of household furniture, which, with their baggage and his own, as well as his books, &c., lost by the wreck of the steamer, he estimates to be worth \$2,280. This amount he now claims from the government, on the ground that the vessel was unseaworthy, and that by transporting him and his family on an unseaworthy vessel, it is obligated for whatever losses may, for that reason, to him have accrued. He contends that he was bound to obey the orders of the government, without reference to the condition of the transport. The memorialist furnishes no evidence of the value or the necessity of the articles that he was carrying with him, and which were lost, other than his own estimate, nor any proof of the unseaworthiness of the vessel (which was at that time new, and was on her first trip) other than his own statement. The committee, however, think, that if, in the opinion of the memorialist, at the time of his departure, the steamer was unseaworthy, there was no rule of the service obligating him to take his family with him, or to risk the safety of any more of his personal property or baggage than was actually necessary for his own use; and on that account, if he did choose to risk the safety of his family, prudence would at least have dictated to him the propriety of insuring the large amount of personal property, to reimburse the loss of which he now claims \$2,280. The committee see no reason why the government should become the insurer of the property of an officer, a precedent of which it would be establishing by the allowance of this claim. The committee discover that Congress, on the 28th of March, 1854, passed an act allowing to each of the sufferers by said accident eight months' pay and allowance, under which act the memorialist received \$864 20—a sum which the committee think is ample enough to com-

pensate him for the necessary losses and inconveniences of the accident.

The committee, as they before remark, are unwilling to compensate officers for losses incurred by reason of the destruction of their own or their family's private baggage or personal property, because there is no propriety in making the government the insurer of the same, when, like all other citizens, the advantages of the insurance offices are open to them to protect them against losses. Independent of this consideration, there are other reasons which present themselves with great force against the admission of the principle which this claim seeks to establish, and they therefore ask to be discharged from the further consideration of the memorial.

JOHN SHAW.

JANUARY 4, 1859.—Laid upon the table and ordered to be printed.

Mr. PENDLETON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of John Shaw, report:

That by the statements of the memorial it appears that during the war of 1812 the War Department ordered the organization of six companies of rangers along the Mississippi river, for the protection of the people of that region from the attacks of the Indians. The terms of the enlistment are stated to be, that the rangers should furnish their own horses, arms, ammunition, clothing, and provisions, and should receive pay quarter-yearly, at the rate of one dollar per day.

The difficulties and dangers of furnishing the supplies were so great that no person except the memorialist was found willing to undertake the duty. He made a contract joint and several with the officers and men of said companies, to furnish them with all the necessary supplies, for which he was to be paid by them, as he avers, out of the money to be received from the government.

This contract he fulfilled at great expense, and after an effort which taxed his credit and energy to the utmost limit.

The government has paid the full amount due to the rangers, not strictly in accordance with the terms of the enlistment, but to their satisfaction.

The men failed to pay the memorialist, on account, as it is alleged, of this deviation from the terms originally made, and with a knowledge of which the memorialist contracted with them.

The memorialist had no contract with the government, and consequently no claim upon it for the price of the provisions. He had no lien upon the pay of the soldiers. He took neither an assignment from them of their pay, nor a power of attorney to collect it. Nor did he give notice to the department of a desire that the money due them should be withheld and applied to this purpose.

The government discharged its obligations to the soldiers without objection from any quarter.

The claim of the memorialist, now to be paid by the government the amount due to him from the rangers, is certainly not valid. His redress is to be sought at the hands of the rangers themselves.

The committee have come to this conclusion with regret, as they find in the case abundant evidence of the energy, perseverance, and courage of the memorialist, and of the value of the services rendered by him at that time.

GEORGE PHELPS.

[To accompany Bill S. 128.]

JANUARY 4, 1859.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following

R E P O R T.

The Committee of Claims, to whom was referred Senate Bill 128, "for the relief of George Phelps," have had the same under consideration, and beg leave to report:

The claimant was a messenger in the office of the Quartermaster General, and claims to have performed extra services, for which the Senate bill allows him fifteen dollars per month for six years and five months. During the whole of this time Mr. Phelps was fully aware of the amount and character of the duties which would be required of him if he held the appointment and received the salary attached thereto. He did not see proper to relinquish the latter, and continued to discharge the duties assigned him. Your committee can perceive no grounds whatever for a claim upon the government, and they therefore report the Senate bill with a recommendation that it do not pass.

GEORGE J. FLEMING

[The following is a copy of a letter]

January 4, 1859

Mr. R. S. MERRILL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to which was referred Senate Bill 122, which
the title of George Fleming, have had the honor to consider, and
and beg leave to report.

The statement was a messenger in the office of the Postmaster
General, and claims to have performed extra services, for which the
Senate bill allows him fifteen dollars per month for six years and five
months. During the whole of this time Mr. Fleming was fully aware
of the amount and character of the duties which would be required of
him if he held the appointment and received the salary attached
thereto. He did not see proper to relinquish the latter, and continued
to discharge the duties assigned him. Your committee are positive
no grounds whatever for a claim upon the Government, and they
therefore report the Senate bill with a recommendation that it do
not pass.

AARON HAIGHT PALMER.

[To accompany bill S. 268.]

JANUARY 4, 1859.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the Senate bill No. 268 "for the relief of Aaron Haight Palmer," have had the same under consideration and beg leave to report :

The memorialist prays compensation for valuable information furnished the government of the United States relative to the character, resources, and commerce of the Oriental nations, drafting maps, charts, &c., in relation thereto, and the like at the request of members of the cabinet and other officers of the government. You committee have examined with great care and much interest this claim of Mr. Palmer's, and they fully concur with the Senate that the petitioner is entitled to relief. Without going into any elaborate report showing the highly important services of Mr. Palmer, and that by years of toil and hard study he acquired that fund of rare information which shaped our commercial relations with the Oriental nations, and originated the Japan expedition, your committee deem it sufficient to adopt the Senate report as their own, which they now do, and report back the bill without amendment and recommend its passage.

IN THE SENATE OF THE UNITED STATES, April 16, 1858.

Mr. CLARK made the following report.

The Committee on Claims, to whom was referred the memorial of Aaron Haight Palmer, made the following report :

That the memorial of the petitioner was presented to the Senate by Hon. J. M. Clayton, on the 18th of January, 1855, and referred to the Committee on Foreign Relations ; and that it was subsequently printed, by order of the Senate, as miscellaneous document No. 10, 2d session 33d Congress.

In presenting the memorial Mr. Clayton made the following remarks :

“ I present the petition of Aaron Haight Palmer, praying compensation for services rendered by him in communication, and by and under the direction, and with the approbation of three Secretaries of State, I believe, and of several committees of this body. I shall not undertake to state the matters set forth in the petition; the committee, of course, will inquire into them. I only wish to say, as an act of justice to this gentleman, that from all the information which I have had an opportunity of receiving heretofore in another position, I believe he is entitled to more credit for getting up the Japan expedition than any other man I have heard of. He has thrown more light on it, and given more information on the subject to the State Department, and to the Congress of the United States, than any one else. His merits, however, in this particular will be canvassed by those to whom the petition will be referred. I move its reference to the Committee on Foreign Relations. I also ask that it may be printed; which motions were agreed to.”—(Congressional Globe, January 18, 1855, page 307.)

The memorial sets forth that the petitioner has devoted many years to the collection of valuable information and statistics in relation to the geography, productive resources, trade, commerce, &c., of the independent Oriental nations, and particularizes at great length what he had done. He states, among other things, that in January, 1848, he enclosed in a letter from New York to President Polk a memoir, stating the importance of operating commercial intercourse with those nations; that in the following February, by invitation of the Secretary of the Treasury, he visited Washington for the purpose of promoting the action of our government in furtherance of the views and suggestions contained in the document sent to the President. That in consequence of action of the Senate on the papers furnished by him he was detained in Washington, laboring for the government in the superintendence of the printing of the papers, until September of that year.

That, in 1849, he completed a series of papers containing geographical descriptions of many Oriental nations, enumerated in his memorial, among them the empire of Japan. That he forwarded to Mr. Clayton, then Secretary of State, a brief *resumé* of said papers, which Mr. Clayton deemed of sufficient importance to cause them to be published. That he afterwards submitted to Mr. Clayton a plan for opening Japan, which was ultimately adopted, and formed the basis of the policy of our government in the late maritime expedition under command of Commodore Perry. That he had several interviews with that officer before he sailed, and furnished him with all the information possible; and that the last one was by special written request of the Secretary of the Navy.

Mr. Palmer further represents that, in pursuance of certain resolutions presented by Mr. Hamlin, chairman of the Senate Committee on Commerce, and adopted by the Senate, on the 21st of February, 1850, calling on the Secretary of State for information respecting the barbarous treatment of shipwrecked American seamen in Japan, also in regard to the independent Oriental nations and their capabil-

ities for a profitable American commerce, &c., he was employed by Mr. Clayton to assist him in preparing his answer to said resolutions, and that he was diligently employed for about three months in that business.

The memorial concludes by asking a reasonable compensation for the services thus rendered to the United States.

No action was taken by the Committee on Foreign Relations upon the memorial in 1855, and on the 19th of May, 1856, it was again referred to the same committee.

No report upon it was made to the Senate, and on the 9th of December, 1856, the Committee on Foreign Relations was discharged from the further consideration of it, and it was referred to the Committee on Commerce, which committee was, on the 12th of February, 1857, discharged from its further consideration, and it was referred to the Committee on Claims; but the then near approach to the end of the session prevented any definite action, and on the 5th of January, 1858, it was again referred to this committee.

On examining the papers your committee find among them a report, evidently prepared by Mr. Clayton, while the memorial was before the Committee on Foreign Relations, and in his particular charge as a member of that committee.

There is appended to it a note in the handwriting of Mr. Clayton, addressed to the clerk of the committee, in the following words:

“Mr. Montague will please file these papers, for the present, in committee.

“J. M. CLAYTON.

“JULY 10, 1856.”

The petition is endorsed by the clerk of the committee as follows:

“The within was sent to me by the Hon. J. M. Clayton, with the accompanying note, dated July 10, 1856.

“E. T. MONTAGUE,

“*Clerk Committee on Foreign Relations.*”

It is a well known fact that Mr. Clayton's health was such, during the summer of 1856, as to prevent him from attending the Senate, except occasionally; and the inference is that he had prepared the report intending to submit it to the committee, but that his failing health prevented, and he therefore sent it to the clerk to be filed, with a view of submitting it when his health would allow his attendance on the committee; but before that opportunity occurred Mr. Clayton died.

Your committee therefore insert the report thus prepared as a part of this report, and for the additional reason that Mr. Clayton, from his official position, knew better the actual services of Mr. Palmer than any other member of the Senate.

The Committee on Foreign Relations, to whom was referred the memorial of Aaron Haight Palmer "praying for compensation for services in collecting valuable information and statistics in relation to the geography, productive resources, trade, commerce, &c., of the independent Oriental nations," having had the same under consideration, beg leave to report:

That from an attentive examination of the memorial and accompanying documents submitted to the committee by Mr. Palmer, it satisfactorily appears that he has been diligently occupied for a considerable number of years in procuring, with great research and untiring industry, from original and authentic sources, (in certain instances from Oriental rulers themselves,) a large amount of new and valuable information, geographical, political, and commercial, in regard to those eastern nations, especially Japan, and their capabilities for a profitable American commerce.

That he has on various occasions, between the years 1846 and 1851, addressed interesting and valuable communications on the subject to the House of Representatives and to three Presidents and Secretaries of State, which have been printed as valuable public documents, and are generally considered as important contributions to our knowledge of several of the comparatively unknown maritime nations of the east, (particularly Japan,) and have proved of high interest and value to our government in opening and extending our commercial relations with several of those eastern countries.

Among those contributions of Mr. Palmer his "plan for opening Japan," submitted by him to the Secretary of State on the 17th of September, 1849, which met with the Secretary's entire approval, appears to have been subsequently adopted as the basis of the policy of our government in the expedition and mission to the ruler of that empire, so successfully accomplished by Commodore Perry, in accordance, it would seem, with the leading views, suggestions, and recommendations contained therein.

Your committee also find that Mr. Palmer, between 1842 and 1853, addressed a series of letters, communications, and contributions, including copies of his printed documents, to high functionaries in Japan, having for their object the opening of that empire to American intercourse and commerce, and which he has transmitted, from time to time during the aforementioned periods, to Nagasaki, through the only safe and reliable channels of communicating with that secluded and mysterious empire. It may reasonably be presumed these have had an important influence and agency at that court in preparing the way for the successful result of Commodore Perry's mission.

Mr. Palmer, it appears, has also printed, at different times, 2,250 copies of his memoirs at his own expense, for distribution to senators, members of Congress, and executive officers of the government; that, at the request of several senators, he prepared a large outline map, to illustrate his memoirs on Siberia, &c., printed by order of the Senate in 1848; and in consequence of the delay at the time in the printing of the Senate documents, he claims compensation for nine months"

services, in which he was necessarily detained during that year in the preparation of the map and correcting the proof sheets of the usual, as well as extra, numbers of copies of said memoir ordered by the Senate; and also for four months' services in preparing a report, illustrated by a special chart for the Secretary of State, under a resolution of the Senate of the 16th January, 1850.

In view of the highly meritorious and valuable services thus rendered by Mr. Palmer, and their important results in preparing the way for opening new marts in the east to our commerce, your committee have come to the conclusion that he is justly entitled to ~~the~~ thousand dollars in compensation for such services and expenses, and they accordingly report a bill allowing the same, and recommend its passage.

Your committee, after a careful examination of the large mass of papers accompanying the memorial, both printed and in manuscript, have come to the conclusion that the petitioner is entitled to relief; and they therefore report a bill in his favor making an appropriation of the sum of three thousand dollars.

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JAMES J. WILSON

President of the Board

January 1, 1900

Mr. J. H. Wilson, Secretary of the Board, New York

REPORT

The Board of Directors of the New York Public Library, Astor Lenox and Tilden Foundations, has the honor to acknowledge the receipt of your report of the work of the Library during the year 1899, and to express its appreciation of the many valuable services rendered by you and your staff.

The Board is pleased to learn that the Library has been successful in securing the necessary funds for the purchase of new books, and that the collections have been increased in many important departments. The Board is also pleased to learn that the Library has been successful in securing the necessary funds for the purchase of new books, and that the collections have been increased in many important departments. The Board is also pleased to learn that the Library has been successful in securing the necessary funds for the purchase of new books, and that the collections have been increased in many important departments.

JANE J. WINGERD.

[To accompany Bill S. 429.]

JANUARY 4, 1859.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate Bill 429, for the relief of Jane J. Wingerd, have had the same under consideration and beg leave to report :

That claimant's husband was employed for a period of about two months, in the office of the First Comptroller of the Treasury, but for which service he was never paid. Application was made to Congress for payment, during the lifetime of Mr. Wingerd, in 1846, but it was refused. This application is now renewed by his widow. It is one of that class of cases where employment has been given to individuals by the heads of bureaus in direct violation of law, relying upon Congress to sanction the violation and compensate the party so employed. It is similar in principle to the case of George W. Flood, and many others reported on adversely by your committee, and they therefore, report back the bill, and recommend that it do not pass.

JANE J. WINGARD

(To accompany H. R. 433)

JANUARY 4, 1834

Mr. H. B. MARSHALL, from the Committee of Claims made the following

REPORT.

The Committee of Claims, to whom was referred Senate Bill 433, for the relief of Jane J. Wingard, have had the same under consideration and beg leave to report:

That claimant's husband was employed for a period of about two months in the office of the First Commissioner of the Treasury, but for which service he was never paid. Application was made to the Treasury for payment, during the lifetime of Mr. Wingard, in 1831, but it was refused. This application is now renewed by the widow. It is one of that class of cases where employment has been given in violation of the heads of business in direct violation of law, relying upon Congress to sanction the violation and compensate the party so employed. It is similar in principle to the case of George W. Flood, and many others reported on adversely by your committee, and they therefore report back the bill, and recommend that it do not pass.

MILES DEVINE.

[To accompany Bill S. 288.]

JANUARY 4, 1859.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate Bill No. 288, for the relief of Miles Devine, have had the same under consideration, and beg leave to report:

That the claimant was a laborer, employed by the government in the repairs of Fort Scammel, in Portland harbor, and while thus employed was buried beneath an embankment of earth, which suddenly fell upon him, seriously injuring him and making him a cripple for life. In consideration of this injury, received while in the employment of the government, the bill proposes giving the memorialist a gratuity or pension. Your committee can perceive no good reason why this case should be made an exception to the hundreds of similar cases constantly occurring among the civil employés of the government. If it be desirable that the government should indemnify against accident or injury, a general law should be passed which would operate equally. They therefore report back the bill, with a recommendation that it do not pass.

MILLS DEVINE.

[To accompany bill H. 222.]

JANUARY 4, 1859.

Mr. S. S. NEWELL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to which was referred Senate Bill No. 222, for the relief of Mills Devine, have had the same under consideration, and beg leave to report:

That the claimant was a laborer, employed by the Government in the repairs of Fort Sumter, in Charleston harbor, and while thus employed was killed by an accident, while working on a scaffold, about 100 feet high, and falling from it. The Committee of Claims, in consideration of this report, received while in the employ of the Government, the full measure giving the maintenance of gratuity or pension. Your committee can perceive no good reason why this case should be made an exception to the hundreds of similar cases constantly occurring among the civil employes of the Government. It is desirable that the Government should indemnify against accident or injury, a general law should be passed which would operate equally. They therefore report back the bill, with a recommendation that it do not pass.

ABIGAIL NASON—HEIRS-AT-LAW OF.

[To accompany Bill S. 137.]

JANUARY 4, 1859.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, to whom was referred Senate bill No. 137 for the relief of the heirs-at-law of the late Abigail Nason, sister and devisee of John Lord, deceased, beg leave to report:

It is nearly thirty years since the first favorable report was made to the House on this claim. It has been reported upon favorably at different times both in the House and Senate, and never adversely, and yet there has never been any action of Congress thereon. The committee upon a re-examination think the claim a just one, and that it ought to be paid. The report of the Senate committee hereto appended sets forth the facts with sufficient clearness and accuracy for the due information of the House, and it is therefore adopted by your committee.

IN THE SENATE OF THE UNITED STATES, *February* 15, 1858.

Mr. SIMMONS made the following report.

The Committee of Claims, to whom was referred the petition of William Nason and others, legal representatives of John Lord, deceased, report:

This claim is founded upon the allegation that John Lord served his country, during the war of the revolution, as a seaman on board the United States ship-of-war "Ranger," from April or May, 1779, to May 1780, when she was taken at the surrender of Charleston, and that he was detained on board a guard-ship some time afterwards, and finally liberated about the last of July—making in all fifteen months. James Gooch deposes that he was purser and clerk of said vessel during the time mentioned; thinks Lord was aboard; that no pay-roll was made out, and no payments made to the men.

Joseph Wardwell, a shipmate of Mr. Lord, also testifies to the truth of the facts alleged.

In the original petition of Mr. Lord for the payment of this claim, which was presented to the 20th Congress, he assigns as the reasons: why his claim was not sooner urged, that at the time of his discharge he did not know that any provision had been made by the government for paying off the seamen; nor until 1798, when, on his return from a foreign voyage, he was informed by Captain Wardwell, (whose affidavit is in the case,) that he and other rangers had been paid. He then applied to an agent to assist him in procuring his pay, but without success, and that it still remains unpaid.

It appears from statements that there are no records of the "Ranger" in either the Treasury, War, or Navy Departments.

The case has been twice favorably reported in the House of Representatives, and once a bill passed for its payment; but it being near the close of the Congress, the bill does not appear to have received any action in the Senate. No adverse report upon it appears to have ever been made.

The committee are of opinion that the evidence before them sustains the claim, and they report a bill for the payment of the amount of wages due, with interest thereon from the time that proof of the service rendered was produced and the claim was made upon the government for payment of what was then due.

Wherefore, your committee report back the Senate's bill, without amendment, and recommend its passage.

TREASURY DEPARTMENT, FOURTH AUDITOR'S OFFICE,

May 25, 1858

SIR: A letter addressed to the department on the 21st instant, by the Hon. S. S. Marshall, chairman of the Committee of the House of Representatives on Claims, requesting information in relation to a claim of the legal representatives of John Lord, for services rendered by him on board of a vessel called the Ranger, during the revolutionary war, having been referred to this office for a report upon the subject, I have the honor to state that there are not, and never were, any papers in the possession of this office relating to naval operations during the revolution; and it is therefore out of my power to furnish any information in regard to the claim in question. The files and records of the office extend no further back than the establishment of the existing government of the United States. The letter of Mr. Marshall and the other papers referred to me, are herewith returned.

I have the honor to be, sir, very respectfully, your obedient servant,

A. O. DAYTON.

HON. ISAAC TOUCEY,
Secretary of the Navy.

NAVY DEPARTMENT, *May 26, 1858.*

SIR: I have the honor to acknowledge the receipt of your letter of the 21st instant, enclosing the papers in the case of Abigail Nason, and to transmit herewith a copy of a letter from the Fourth Auditor of the Treasury, to whom your communication was referred for a report.

In addition to the report of the Auditor, I would state that as the "Ranger" was captured by the British, at Charleston, in the year 1780, it is probable that the rolls of the vessel remained in the possession of the enemy.

The papers which accompanied your letter are herewith returned.

I am, respectfully, your obedient servant,

ISAAC TOUCEY.

Hon. S. S. MARSHALL,

Chairman Committee of Claims,

House of Representatives.

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JOSEPH McREYNOLDS.

[To accompany Bill H. R. No. 753.]

JANUARY 4, 1859.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition and papers of Joseph McReynolds, of Russell county, Virginia, report:

That said petitioner was a private in the company of Captain Samuels, in the regiment of Lieutenant Colonel Stephen Moore, during the war of the revolution, and that he was wounded at the defeat of General Gates by a rifle ball, which passed through his ankle and rendered him a cripple for life.

John Cole, who states under oath that he was in the same company and regiment with Joseph McReynolds, says that at the time McReynolds was wounded he was standing the next man to him in the line, and that when he stated that he was wounded the captain ordered him to fall back in the rear; he knows that he was wounded at that time.

James Breedlove, who says he was in the same company and regiment, states that he saw McReynolds at the time he was wounded at Gates' defeat.

An old paper is filed with the petition, of which the following is a copy:

“AUGUST, the 28th day, 1787, Caswell county.

“To all to whome this may concearn, greten: I hearby certifie that Joseph Mcronnals sarved in the melisha duty, and that he was wounded so that he was disabled and became an inveleade and cleared by our regimental corte marshel. Given under my hand the day above wrighten.

“SHAD. HARGIS, *Capt.*

“NORTH CAROLINA.”

The committee are of opinion that he should be granted a pension at the rate of \$4 per month, and to that end report a bill; said pension to commence on the 15th day of February, 1830, being the day on which his papers were filed in the House of Representatives.

JOSEPH MARYNOLDS
(The accompanying bill is herewith submitted.)

JANUARY 4, 1859.

Mr. JAMES, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition and papers of Joseph Marynolds, of New York, &c., &c., &c.,

That said petitioner was a private in the company of Captain Mearns, in the regiment of Lieutenant Colonel Stephen Mearns, during the war of the rebellion, and that he was wounded at the battle of Gettysburg by a rifle ball, which passed through his ankle and rendered him a cripple for life.

John Cole, who states under oath that he was in the same company and regiment with Joseph Marynolds, says that on the 1st of July, 1863, he was standing the next man to him in the line, and that when he stated that he was wounded the captain ordered him to fall back in the rear; he knows that he was wounded at that time.

James Strickland, who says he was in the same company and regiment, states that he saw Marynolds at the time he was wounded at Gettysburg.

An old paper is filed with the petition, of which the following is a copy:

"August, the 28th day, 1867, New York county.

"To all to whom this may come, I hereby certify that Joseph Marynolds served in the militia during the war of the rebellion, and that he was wounded at the battle of Gettysburg, and became an invalid and crippled by our regimental order. Given under my hand and the seal of my office, this 28th day of August, 1867.

ERAD. HARRIS, Gov.

"NORTH CAROLINA."

The committee are of opinion that he should be granted a pension at the rate of \$1 per month, and to that end report a bill; and they also to commence on the 15th day of February, 1859, being the day on which his papers were filed in the House of Representatives.

ANDULOTIA PIER.

[To accompany Bill H. R. No. 754.]

JANUARY 4, 1859.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition and accompanying papers of Andulotia Pier, report:

That they have carefully examined the same, and find that the petitioner states, under oath, that he was a private soldier in the company of Captain Othneil Jewett, of the Vermont militia, in the war of 1812. That he volunteered, and joined the company at New Haven, Addison county, Vermont, on or about the sixth day of September, A. D. 1814. That on his march from New Haven to Plattsburg the company camped over night at a place called Salmon River. "At said place of encampment a portion of the company slept in a log cabin, he with others slept on the floor; that shortly before day, on the morning of the eleventh of September, 1814, one of the members of his company, known by the name of March Hawley, in attempting to go out in the dark through where the men were sleeping on the floor, stepped on the abdomen of the petitioner and produced a wound which has never been healed, and which has rendered him incapable from earning a living by manual labor."

The statements of the petitioner are fully corroborated by the sworn affidavit of Eli A. Sprague, who says he was a member of the same company, and was in the cabin and heard the petitioner cry out with pain when he was stepped upon. It produced considerable confusion at the time among the company. After that Pier continued to complain of having been seriously injured. The deponent was a messmate of the petitioner, and has a personal knowledge of the facts as they occurred at the time. He has known Pier ever since, and knows he is now disabled by reason of said wound.

J. M. Wilson, who is certified to be a highly respectable physician of Licking county, Ohio, swears to the character of the wound, and to the fact that the petitioner is now disabled by reason of it.

The Hon. S. S. Cox, a member of this House, certifies to the character of the petitioner for integrity and truthfulness.

Your committee report a bill.

ABSTRACT.

(To accompany the H. R. No. 250.)

JANUARY 4, 1857.

Mr. JAMES, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition and accompanying papers of Frederick J. J., report:

That they have carefully examined the same, and find that the petitioner states, under oath, that he was a private soldier in the company of Captain Othello J. J., of the Vermont militia, in the war of 1812. That he volunteered, and joined the company on New Year's day, 1812, at Newburyport, Vermont, on or about the 1st day of January, 1812. That on his march from Newburyport to the place where the company camped over night at a place called "the camp," he was placed in a position of exposure to the weather, and was exposed to a severe cold, which he with others slept on the floor; that shortly before day, on the morning of the 1st of September, 1814, one of the members of the company, known by the name of "Mach" Hawley, in attempting to go out in the dark through where the men were sleeping on the floor, stepped on the abdomen of the petitioner and produced a wound which has never been healed, and which has rendered him incapable from earning a living by manual labor.

The statements of the petitioner are fully corroborated by the sworn affidavit of Eli A. Sprague, who says he was a member of the same company, and was in the camp and heard the petitioner cry out with pain when he was stepped upon. It produced considerable confusion at the time among the company. After that time continued to complain of having been seriously injured. The respondent was a member of the company, and has a personal knowledge of the facts as they occurred at the time. He has known Peter ever since, and knows he is now disabled by reason of said wound.

J. M. Wilson, who is certified to be a highly respectable physician of Licking county, Ohio, swears to the character of the wound, and to the fact that the petitioner is now disabled by reason of it. The Hon. S. S. Cox, a member of this House, certifies to the character of the petitioner for integrity and truthfulness.

Your committee report a bill.

NATHANIEL WILBOURN.

JANUARY 4, 1859.—Laid upon the table and ordered to be printed.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Nathaniel Wilbourn, report:

It appears that said Wilbourn was a private in the company of Captain Julian Megagnor, of the Virginia militia, during the war of 1812. The muster rolls of the company in which he served show that he was sick in the country during a part of the time for which he enlisted.

Wm. Denby, who was a member of the same company with Wilbourn, certifies that “a few days previous to his (Wilbourn’s) return to duty, the neighbors in Princess Ann county, where he was, were called out to stop a considerable body of runaway negroes, going to the British fleet in the bay, and whilst engaged with them he was seriously wounded.” Mr. Wilbourn claims a pension for wounds thus incurred. It is very clear, from the evidence, that he was not in the line of his duty as a soldier when wounded ; therefore, your committee recommend that his prayer be rejected.

NATHANIEL WILBURN.

January 4, 1858.—Laid upon the table and ordered to be printed.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Nathaniel Wilburn, report:

It appears that said Wilburn was a private in the company of Capt. John M. Mearns, of the Virginia militia, during the war of 1812. The muster rolls of the company in which he served show that he was sick in the company during a part of the time for which he enlisted. Mr. Mearns, who was a member of the same company with Wilburn, certifies that "a few days previous to his (Wilburn's) return to duty, the surgeon in Virginia Ann county, where he was, called out to stop a considerable body of runaway negroes, going to the British fort in the bay, and whilst engaged with them he was seriously wounded." Mr. Wilburn claims a pension for wounds thus incurred. It is very clear, from the evidence, that he was not in the line of his duty as a soldier when wounded; therefore, your committee recommended that his prayer be rejected.

BENJAMIN ALMY.

JANUARY 4, 1859.—Laid upon the table, and ordered to be printed.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Benjamin Almy, report:

That they have carefully examined the same, and find that his petition is wholly unaccompanied by proof of service or injury sustained. It does not appear that he has ever applied to the proper department of government for relief.

They recommend that the prayer be rejected.

ELIZA G. FISHER.

JANUARY 4, 1859.—Laid upon the table and ordered to be printed.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Eliza G. Fisher, report :

That it appears, from the statement of the petitioner, that the Committee on Naval Affairs reported a bill for the relief of her mother, Elizabeth Champney, in May, 1840. Said bill failed to become a law, and her mother has since died. She prays that the aforesaid bill may be revived and the benefits of the same be conferred on the surviving children of said Elizabeth Champney.

Your committee are unable to see any good reason for reporting such a bill, but many against such a course. They recommend the rejection of the petition.

ELIZA O. FURNER

January 4, 1868 - Read upon the table and referred to the Committee

Mr. Liver, from the Committee on Invalid Pensions, made the following

REPORT

The Committee on Invalid Pensions, to whom was referred the petition of Eliza O. Furner, report:

That it appears from the statement of the petitioner, that the same person as Mary A. Furner reported a child was the child of her mother, Elizabeth Furner, in Mar. 1849. Said bill failed to become a law, and her mother has since died. She prays that the aforesaid bill may be revived and the benefits of the same be conferred on the surviving child of said Elizabeth Furner. Your committee are unable to see any good reason for reporting such a bill, but many against such a course. They recommend the rejection of the petition.

ROBERT WICKHAM.

JANUARY 4, 1859.—Laid upon the table and ordered to be printed.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Robert Wickham, report:

That they have had the same under consideration. It is stated by the petitioner that he was a private soldier in the company of Captain William Taylor, in the 18th regiment of the regular army, during the war of 1812; and that whilst with a detachment of seventeen or eighteen men under the command of Lieutenant Brown, who were sent over to John's Island to arrest some British soldiers, who were drawing water at a well, and that whilst on the march to said place he received a gunshot wound, the said shot being fired by the British soldiers aforesaid. There is no evidence accompanying the petition that would justify your committee in recommending the petition to the favorable consideration of your body. They ask to be discharged.

FOREST WORKS

REPORT
OF THE
COMMISSIONER OF THE FOREST SERVICE

FOR THE YEAR 1874

REPORT

OF THE
COMMISSIONER OF THE FOREST SERVICE

FOR THE YEAR 1874

LYMAN N. COOK.

JANUARY 4, 1859.—Laid upon the table and ordered to be printed.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial of Lyman N. Cook, report :

That they have considered the same, and are unanimous in the opinion, that he has already received as large a pension as he was entitled to by the special acts to which he refers in his petition, and that he has been paid all the arrears to which he is entitled under said acts. They therefore ask to be discharged from the further consideration of the subject, and that his petition be rejected.

LYMAN A. COOK

REPORT

FROM THE COMMITTEE ON INDIAN AFFAIRS, MADE THE 11TH
JANUARY 1878

REPORT

OF THE COMMITTEE ON INDIAN AFFAIRS, TO THE SENATE, IN
ANSWER TO A RESOLUTION PASSED BY THE SENATE, MAY 11, 1877

That they have considered the same, and are anxious to the
Senate, that he has already received as large a pension as he was
entitled to by the special act to which he refers in his petition, and
that he has been paid all the arrears to which he is entitled under said
act. They therefore ask to be discharged from the further consideration
of the subject, and that his petition be rejected.

SARAH BLACKWELL.

[To accompany Bill H. R. No. 756.]

JANUARY 4, 1859.

Mr. ANDERSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Sarah Blackwell, of the State of Missouri, report :

That her husband, James M. Blackwell, was a private in the company of Captain Felch, in the regiment commanded by General Arbuckle. That he volunteered at Fort Smith, in the State of Arkansas, on or about the 16th day of July, 1846, for the term of twelve months. The official records show that he died in the service at Fort Smith on the 26th of January, 1847. The widow applied for a pension, and was refused on the ground that her husband having been kept at Fort Smith for the purpose of protecting the frontiers of Arkansas, and not having marched to Mexico, the seat of war, she was not entitled under any existing law. Your committee cannot believe that such a discrimination is just. It was clearly no fault of the husband of the petitioner that he did not march to Mexico. The evidence proves that he enlisted to serve wherever ordered. They are unanimous in the opinion that a pension should be granted to the widow, and for that purpose they report a bill.

SARAH BLACKWELL.
[The accompanying bill is No. 752.]

JANUARY 4, 1855.

Mr. ALEXANDER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Sarah Blackwell, of the State of Missouri, report:

That her husband, James M. Blackwell, was a private in the company of Captain Welch, in the regiment commanded by General Arkansas. That he volunteered at Fort Smith, in the State of Arkansas, on or about the 15th day of July, 1846, for the term of twelve months. The official records show that he died in the service at Fort Smith on the 20th of January, 1847. The widow applied for a pension, and was refused on the ground that her husband having been kept at Fort Smith for the purpose of protecting the frontiers of Arkansas, and not having marched to Mexico, the fact of war, she was not entitled under any existing law. Your committee cannot believe that such a discrimination is just. It was clearly no fault of the husband of the petitioner that he did not march to Mexico. The evidence proves that he volited to serve wherever ordered. They are unanimous in the opinion that a pension should be granted to the widow, and for that purpose they report a bill.

MICHAEL HANSON.

[To accompany Bill H. R. No. 757.]

JANUARY 4, 1859.

Mr. ANDERSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Michael Hanson, report :

That they have examined the same, and find the facts as reported by the Senate Committee on Pensions in May, 1854, and Naval Affairs in July, 1856. They adopt these reports, and make them part of this. They cannot, however, report a bill granting arrearages to January 1, 1846, having adopted a rule not to report bills granting arrearages beyond the date on which the petition was filed before their committee, which, in this case, appears to have been on the 10th day of January, 1857. They report a bill granting a pension of six dollars per month from that date.

The Committee on Pensions, to whom was referred the petition of Michael Hanson for a pension, report :

That the case was first presented to Congress in 1846, and the proofs then submitted proving satisfactory to the Committee on Naval Affairs, a favorable report and bill were submitted in that year. The bill passed the Senate, but failed to become a law. In 1848 a similar report was made, accompanied by a bill, which also passed the Senate. In 1850 the Commissioner of Pensions recommended the case to the favorable consideration of Congress as a meritorious one. The committee find the case, as set forth in report of the Committee on Naval Affairs in 1846, fully sustained by the papers then filed. That report is hereto appended, as part of this report. In view of the long delay of this claim, repeatedly acknowledged to be just, your committee deem it proper to report a bill granting a pension as **prayed** for, to commence on the 1st of January, 1846, the date at which the proofs were satisfactorily completed.

IN SENATE.—*July 18, 1846.*

The Committee on Naval Affairs, to whom was referred the petition of Michael Hanson, have considered the same, with the accompanying evidence, and now report :

That it appears by the petition and evidence that Hanson has been in the naval service of the United States twenty-one years ; and has, during that period, sustained a good reputation for correct habits and for efficiency and fidelity as a seaman. He is now old and poor, and suffering under injuries received while on board the frigate United States, under the command of Commander Williamson, in 1837. The injury was a rupture of the groin, and is fully established by proof derived from the surgeon and other officers of the ship. The extent of his present disability is shown to be one-half ; in accordance with which the committee report a bill for his relief.

ANSLEM CLACKSON.

[To accompany Bill H. R. No. 758.]

JANUARY 4, 1859.

Mr. ANDERSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition and accompanying papers of Anslem Clackson, of Missouri, report:

That the said Anslem Clackson was 1st sergeant in the company of Captain James Clackson, of the 3d regiment of Missouri volunteers, during the Mexican war, the regiment being commanded by Colonel John Ralls. That he was ordered by his superior officer, on the 30th of October, 1847, to proceed from Santa Fé to the State of Missouri to raise recruits for the regiment; that whilst on his journey from Santa Fé, and whilst on the headwaters of the Arkansas river, the weather became intensely cold, so much so, that a large number of the animals belonging to the company with him were frozen to death, and that by reason of exposure at that time he was attacked with rheumatism, from which he has never recovered.

S. B. Bowles and S. M. Sproul, of Dade county, Missouri, who are certified to be respectable physicians in their profession, swear that he is wholly disabled by reason of rheumatism.

James J. Clackson, who was captain of the company under whom Anslem Clackson served, swears that he knew the petitioner intimately for years before he entered the service; that he was a hale hearty man; that he so continued until he left Santa Fé by order of Colonel Ralls for the purpose of raising recruits in Missouri. That he did not see the petitioner for some months after his return to Missouri, but when he did see him he was disabled by reason of the rheumatism, contracted whilst on his return from Santa Fé, as aforesaid.

James W. Cottner, who was lieutenant in the same company, swears to the statements made by Captain James J. Clackson.

The only ground for the rejection of the claim at the pension office was that the officers did not swear to the extreme cold, of which they could have had no knowledge. The Hon. John S. Phelps, a member of this House, certifies to the high character of the witnesses. Your committee believe the case to be made out, and therefore report a bill.

ANSELMO CHACON.

[To accompany H. R. No. 708.]

JANUARY 4, 1859.

REPORT.

That the said Anselmo Chacon was let surgeon in the company of Captain James Chacon, of the 2d regiment of Missouri volunteers, during the Mexican war, the regiment being commanded by Colonel John H. Hall. That he was ordered by his superior officer, on the 30th of October, 1847, to proceed from Santa Fe to the State of Missouri to raise recruits for the regiment; that whilst on his journey from Santa Fe and whilst on the headquarters of the 2d regiment, the number became extremely small, so much so that a large number of the animals belonging to the company were sent to the State of Texas, and that by reason of exposure at that time he was attacked with rheumatism, from which he has never recovered. That he is wholly disabled by reason of rheumatism, and is entitled to be regarded as a disabled person in their profession, and that he is wholly disabled by reason of rheumatism. James A. Chacon, who was captain of the company under whom Anselmo Chacon served, swears that he knew the petitioner intimately for years before he entered the service; that he was a hale hearty man; that he so continued until he left Santa Fe by order of Colonel Hall for the purpose of raising recruits in Missouri. That he did not see the petitioner for some months after his return to Missouri, but when he did see him he was disabled by reason of the rheumatism, contracted whilst on his return from Santa Fe, as above said. James W. Collier, who was lieutenant in the same company, swears to the statements made by Captain James A. Chacon. The only ground for the rejection of the claim at the pension office was that the officers did not swear to the extent of the claim, of which they could have had no knowledge. The Hon. John S. Phelps, a member of this House, testifies to the high character of the witnesses. Your committee believe the case to be ready for, and therefore report a bill.

WILLIAM T. BROADDUS.

[To accompany Bill H. R. 759.]

JANUARY 4, 1859.

Mr. ANDERSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of William Broaddus, of Virginia, report:

That the petitioner was a private in the company of Captain W. H. Richardson, of Virginia militia, and served from the 26th of August, 1814, until he was injured on the 5th of October, 1814. He is now pensioned for that injury at the rate of \$2 66 $\frac{2}{3}$ per month, being the rate for one-third disability. For the meritorious services of the petitioner as set forth in a letter from his captain, which letter is filed with the papers, your committee are of the opinion that the pension should be increased to \$4 per month, being for one-fourth disability. A bill is herewith reported to that effect.

WILLIAM T. BROADBENT.

(The accompanying bill H. R. 709.)

JANUARY 4, 1859.

Mr. Anderson, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of William Broadbent, of Virginia, report:

That the petitioner was a private in the company of Captain W. H. Richardson, of Virginia militia, and served from the 20th of August, 1814, until he was injured on the 6th of October, 1814. He is now pensioned for that injury at the rate of \$2 00 per month, being the rate for one-third disability. For the numerous services of the petitioner as set forth in a letter from his captain, which letter is filed with the papers, your committee are of the opinion that the pension should be increased to \$4 per month, being for one-fourth disability. A bill is herewith reported to that effect.

BENJAMIN CUMMINS.

JANUARY 4, 1859.—Laid upon the table and ordered to be printed.

Mr. ANDERSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial of Benjamin Cummings, report:

That the memorialist claims to have been a soldier in the company of Captain J. H. Hook, in the 4th regiment of infantry, in the war of 1812; that he enlisted on or about the 10th of September, 1813; that while in the line of his duty in said company and regiment he had the misfortune to break his right leg and very much injure the left leg. He does not give any particulars as to how the accident happened, nor does he produce one particle of evidence to substantiate his claim. The committee are unanimous in the opinion that his petition should be rejected.

BRADAMIN CUMMINS.

January 4, 1859. — Laid upon the table and ordered to be printed.

Mr. Anderson, from the Committee on Invalid Pensions, made the following

REPORT:

The Committee on Invalid Pensions, to whom was referred the memorial of Bradamin Cummings, report:

That the memorialist claims to have been a soldier in the company of Captain J. H. Hook, in the 4th regiment of infantry, in the war of 1812; that he enlisted on or about the 15th of September, 1812; that while in the line of his duty in said company and regiment he had the misfortune to break his right leg and very much injure the left leg. He does not give any particulars as to how the accident happened, nor does he produce one particle of evidence to substantiate his claim. The committee are unanimous in the opinion that his petition should be rejected.

WILLIAM YOUNGS.

JANUARY 4, 1859.—Laid on the table and ordered to be printed.

Mr. ANDERSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of William Youngs, asking for an increase of pension through R. S. Molony, report:

That said Youngs is now a pensioner, and has been since 1813, at the rate of eight dollars per month, the maximum rate that is, or has been allowed by Congress to the common soldier, consequently the committee report against granting the prayer of the petitioner.

WILLIAM T. HARRIS

President of the American Medical Association, 1917-1918

Dr. Harris is now the President of the American Medical Association, and is the author of the following:

REPORT

The American Medical Association, in its annual report, has set forth the following facts and figures:

The American Medical Association, in its annual report, has set forth the following facts and figures:

The American Medical Association, in its annual report, has set forth the following facts and figures:

HENRY F. BOWERS.

[To accompany Bill H. R. No. 760.]

JANUARY 4, 1859.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Henry F. Bowers, report:

That said Bowers was a private of marines and enlisted on the 23d day of January, 1853, and was discharged by surgeon's certificate on the 20th April, 1855; that his disability was caused by inflammation of the eyes, produced by standing guard whilst on board the receiving ship Union, at the Philadelphia navy yard. Since his discharge, as aforesaid, he has become blind. Surgeon G. R. B. Horner, of the United States navy, certifies to the exposure of Bowers whilst standing guard, and also certifies to the fact that his vision is now permanently impaired by reason of that exposure, and that he is in consequence disabled three-fourths. Surgeon John O. Barclay, of the United States navy, certifies that at the time Bowers entered the service he was a sound healthy man in every respect. The committee are of opinion that he is entitled to a pension of eight dollars per month, to date from the 25th day of January, 1858. They report a bill.

JOHN O'LEARY.

[To accompany Bill H. R. 761.]

JANUARY 4, 1859.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial and accompanying papers of John O'Leary, report:

That the memorialist was a private on board the United States ship Vandalia, and that during a gale of wind on the 24th July, 1852, he was thrown against the combings of the hatch of said ship with such violence as to disable him from further service. That for said injuries he was placed on the invalid pension roll, at the rate of three dollars and fifty cents per month. It further appears, by the certificate of John C. Palmer, surgeon of the United States ship Ontario, that he is now totally disabled. It also appears in evidence that O'Leary is now in indigent circumstances. Your committee think he is entitled to an increase of his pension to eight dollars per month; said increase to date from the 3d day of February, 1858. They report a bill to that effect.

GREGORY PATTI.

[To accompany Bill H. R. No. 762.]

JANUARY 4, 1859.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial and accompanying proofs in the case of Gregory Patti, report:

That it appears he served continuously in the United States navy from May 13, 1825, to April 19, 1842, and occasionally thereafter until the year 1845, making an aggregate of over twenty years. That he served as cook on the following ships: Warren, Java, Brandywine, Concord, Constellation, Delaware, John Adams, Constitution, Ohio, Brandywine, and Cumberland. That his position was one of great exposure and confinement, under deck to the heat of the galley fire and sudden changes by currents of air. He served faithfully, as appears by the original certificates of the commanders of the above named vessels. By reason of exposure, as aforesaid, he was seized with a lameness which terminated in paralysis, which rendered him incapable of further service, and not recovering he was discharged. The health of the applicant continued to decline until he has become entirely *helpless and blind*. Captain Breese, of the United States navy, certifies to the manner of his disability, and that he is now disabled. Captain John Smith, of the United States navy, and superintendent of the bureau of docks and yards, certifies that Patti is entitled to enter the naval asylum, but that he prefers not to be separated from his family, and that it will cost more to keep him in the asylum than to grant him a pension. Captain Stringham, of the United States navy, certifies to the manner and extent of Patti's disability.

Your committee report a bill granting relief.

MARY J. MADDOX.

[To accompany Bill H. R. No. 763.]

JANUARY 4, 1859.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

R E P O R T .

The Committee on Invalid Pensions, to whom was referred the petition and papers of Mrs. Mary J. Maddox, report :

That they find that the husband of the petitioner, Edward C. Maddox, was a private in Captain Hardin's company of the 4th regiment of Kentucky volunteers. That while in the service he contracted a disease which finally terminated in his death on May 21, A. D. 1858. That prior to his death he was placed on the invalid pension roll at the rate of eight dollars per month. She is now destitute and asks that the pension may be continued to her.

Your committee believe that all the facts in this case justify them in reporting a bill.

MARY J. HADDOX
(The deceased July 11, 1852)

JANUARY 4, 1853

Mr. FROST, from the Committee on Invalid Pensions, made the following

REPORT

The Committee on Invalid Pensions, to whom was referred the petition and report of Mrs. Mary J. Haddock, report:

That they had that the husband of the petitioner, Edward C. Haddock, was a private in Captain Haddock's company of the 4th regiment of Kentucky volunteers. That while in the service he contracted a disease which finally terminated in his death on May 21, A. D. 1852. That prior to his death he was placed on the invalid pension roll at the rate of eight dollars per month. That he now resides at and who that the pension may be continued to her. Your committee believe that all the facts in this case justify them in reporting a bill.

ALBRO TRIPP.

JANUARY 4, 1859.—Laid upon the table and ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial of Albro Tripp, report:

That it appears, from the papers submitted with the memorial, that said Albro Tripp is now nearly eighty-six years of age. That during the war of 1812 he became disabled in the service. That he was a captain; and on account of the disabilities incurred he was placed on the invalid pension roll, at the rate of ten dollars per month, being for one-half disability. He now asks that he may receive a full pension, because he is wholly disabled. Your committee cannot believe that his increased disability is produced by reason of his service in the war, but rather from the infirmity of old age, for which they would not be justified in recommending an increase of his pension. They ask to be discharged from the further consideration of his memorial.

ALFRED TRIPP.

January 4, 1859.—Laid upon the table and referred to the committee.

Mr. Clark, from the Committee on Invalid Pensions, reads the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial of Alfred Tripp, report:

That it appears, from the papers submitted with the memorial, that Alfred Tripp is now nearly eighty years of age. That he was a private in the 1st Maine Infantry, and on account of the disability incurred by him, was placed on the invalid pension roll, at the rate of ten dollars per month, being for one half disability. He now asks that he may receive a full pension, because he is wholly disabled. Your committee cannot believe that the increased disability is produced by reason of his service in the war, but rather from the infirmity of old age, for which they would not be justified in recommending an increase of his pension. They ask to be discharged from the further consideration of his memorial.

JACOB SAILOR.

JANUARY 4, 1859.—Laid upon the table and ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Jacob Sailor, respectfully report:

That the evidence accompanying the petition shows that the petitioner was a private in Captain J. T. Chunn's company, 19th regiment, United States infantry. He enlisted on the sixth of February, 1814, for twelve months; re-enlisted February 19, 1814, for the war, and was honorably discharged on the fifth of June, 1815. The official records furnish no evidence that he was ever disabled in manner in the service. The only evidence in the case is a certificate of two physicians, made in December, 1850, that they have examined Sailor and find him to be wounded, supposed by a musket ball, and an affidavit from William Cochran, that he was present in 1837, when and where the pension papers for this case were drawn up, and that one David Wolford then testified to having been with Sailor, and to have seen his wounds, before they were dressed, at the time of the battle of Bridgewater. The committee recommend the rejection of his petition.

JACOB RAILOR

January 4, 1855 — Fall upon the table and subject to be printed

Mr. Case, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Jacob RAILOR, respectfully report:

That the evidence accompanying the petition shows that the petitioner was a private in Captain A. T. Church's Company, 12th Maine, United States Infantry. He enlisted on the 10th of February, 1864, for twelve months; re-enlisted February 12, 1865, for the same term, and was honorably discharged on the 15th of June, 1865. The petitioners furnish no evidence that he was ever disabled in service, or that he was ever disabled in the line of duty. The only evidence in the case is a certificate of discharge, dated September 1865, that they have examined the records and find him to be wounded, supposed by a medical board, and an affidavit from William Cochran, that he was present in 1867, when and where the pension papers for this case were drawn up, and that one David Lybrand then testified to having been with RAILOR, and so have seen his wounds, before they were drawn, at the time of the battle of Bridgewater. The committee recommend the rejection of his petition.

WILLIAM KINGSBURY, SAMUEL CRAPIN, VALENTINE G.
WEHRHEIM, AND MOSES OLMSTEAD.

JANUARY 4, 1859.—Laid upon the table and ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petitions of William Kingsbury, Moses Olmstead, Valentine G. Wehrheim, and Samuel Crapin, report :

That they have carefully considered the same, and find that the petitioners are now on the pension list, at the highest rate of pension allowed to privates. Your committee have uniformly refused to go beyond the rate established by the general laws on the subject of pensions. The facts set forth in the petitions referred to will not, in their opinion, justify them in recommending the increase prayed for. They therefore ask to be discharged from the further consideration of the same.

WILLIAM KINGSBURY, SAMUEL GRAPIN, VALENTINE G.
WERNHORN, AND MORRIS OLNEY.

Printed at the Government Printing Office, Washington, D. C., 1867.

Mr. Case, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition
of William Kingsbury, Samuel Grapin, Valentine G. Wernhorn, and
Morris Olney, report:

That they have carefully considered the same, and find that the pe-
titioners are now on the pension list, at the highest rate of pension
allowed by law. Your committee have minutely examined the
papers and the rate established by the general law on the subject of pen-
sions. The facts set forth in the petition are true, and in their
opinion, justify them in recommending the lowest pension rate. They
therefore ask to be discharged from the further consideration of the
same.

JACOBINA KEEFHABER.

JANUARY 4, 1859.—Laid upon the table and ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Jacobina Keefhaber, report:

That the petitioner alleges that her husband, John Keefhaber, enlisted at Philadelphia, Pennsylvania, in the year 1847, as a private, in company F, 11th United States infantry, for and during the war with Mexico; that he was discharged at New Orleans on the 17th day of August, 1848, and that her husband died on the 19th August, 1848, two days after he was discharged. Your committee are unable to find any evidence that will show that her husband, John Keefhaber, died of wounds or disease contracted while in the service; therefore they deem it their duty to report adversely on her petition.

JACOBINA KEEFEHANE.

JANUARY 4, 1859.—Laid upon the table and ordered to be read.

Mr. Cass, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition
of Jacobina KeefeHane, report:

That the petitioner alleges that her husband, John KeefeHane, enlisted at Philadelphia, Pennsylvania, in the year 1817, as a private, in company E, 11th United States Infantry, for and during the war with Mexico; that he was discharged at New Orleans on the 11th day of August, 1848, and that her husband died on the 10th August, 1848, two days after he was discharged. Your committee are unable to find any evidence that will show that her husband, John KeefeHane, died of wounds or disease contracted while in the service; and they deem it their duty to report adversely on her petition.

EBENEZER RICKER.

[To accompany bill S. 411.]

JANUARY 4, 1859.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred Senate bill No. 411, for the benefit of Ebenezer Ricker, report :

That they have had the same under consideration, and find from the evidence submitted that the said Ebenezer Ricker enlisted as a private in the company of Captain Blake, Lieutenant Lawton, in the 2d regiment United States dragoons, commanded by Colonel D. E. Twiggs, on the 16th of October, 1839; was afterwards promoted to the rank of corporal. That while in the line of his duty, riding on patrol through the bushes, he had occasion to take his carbine from the sling in the saddle, when it was accidentally discharged, and the ball passed through his left wrist and disabled him from using that arm. The Senate bill proposes to give him a pension at the highest rate of disability. Your committee do not think that he can be fully disabled from maintaining a living by the said wound in the left arm. They therefore report the bill back with an amendment granting half-pay for one-half disability, which they think is reasonable. They recommend that "eight dollars per month" in the seventh line be stricken out and four dollars per month be inserted.

JAMES MYER.

[To accompany Bill S. 428.]

JANUARY 4, 1859.

Mr. GOODWIN, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill No. 428, "for the relief of James Myer," have had the same under consideration, and beg leave to report:

That this is a claim for services as quartermaster to the Mexican boundary commission, from about the 1st of August, 1851, till the beginning of the year 1852, and also for expenses in returning home after he was superseded in the office. It appears that this is a claim properly within the control and jurisdiction of the Department of the Interior, to which office it was submitted for payment and thrice rejected by the Secretary—in April, and again in May, 1850, by Secretary Stuart, and in December, 1854, by Secretary McClelland. The time for which this salary is charged, is that occurring between the date of his removal from office to his return home, five months and twelve days. If this were a new question your committee could recognize no principle which rendered the government liable for the continuance of a salary after removal from office, where the power of removal properly existed; but this matter having been adjudicated by the department of the government to which it properly belongs, your committee are unwilling to disturb the decision made therein, and they therefore report back the bill and recommend that it do not pass.

JAMES WYER
(To accompany H. R. 412)

JANUARY 4, 1835

Mr. Giddings, from the Committee on Claims, reads the following

REPORT.

The Committee of Claims, to whom was referred Senate Bill No. 412, for the relief of James Wyer, have the honor to report, that they have the honor to report

That this is a claim for services as purveyor to the Mexican boundary commission, from about the 1st of August, 1831, till the termination of the year 1832, and also for expenses in returning home after he was superseded in the office. It appears that this is a claim properly within the control and jurisdiction of the Department of the Interior, to which office it was submitted for payment and which is acted by the Secretary—in April, and again in May, 1833, by the Secretary of the Interior, and in December, 1834, by Secretary McCalister. The claim for which this salary is charged, is that accruing between the date of his removal from office to his return home, five months and twelve days. If this were a new question your committee could exercise no principle which rendered the government liable for the continuance of a salary after removal from office, where the power of removal properly existed; but this matter having been adjudicated by the Department of the Interior to which it properly belongs, your committee are unwilling to disturb the decision made therein, and they therefore report back the bill and recommend that it be not

ANN L. ROGERS.

[To accompany Bill S. 340]

JANUARY 6, 1859.

Mr. MAYNARD, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill 340, for the relief of Ann L. Rogers, have had the same under consideration and beg leave to report :

That on the 4th of August, 1841, Mr. Ewing, then Secretary of the Treasury, appointed Col. John A. Rogers to examine the books in certain land offices in Alabama and Mississippi. The character of the appointment, with the compensation, will appear from the following passages in the Secretary's letter of appointment :

“TREASURY DEPARTMENT, August 4, 1841.

“SIR: I have appointed you to examine the books at the several land offices in Mississippi and Alabama, and to ascertain the balances of public moneys in the hands of the several receivers of public moneys in those offices; the Commissioner of the General Land Office has been directed to furnish you with such instructions and information as may be necessary for the due performance of that duty. For this service you will be allowed a compensation of eight dollars per day, while engaged in the examination, and six dollars for every twenty miles travel from your residence to the office at which the examination shall commence, and thence from office to office till you return to your residence. Such sums as may be necessary for your expenses you are authorized to draw from the receivers, who will charge the same in their quarterly accounts, and transmit your receipts as vouchers.”

After making the examination of the land offices, as directed by the Commissioner of the General Land Office, at St. Stephen's, Cahaba, Huntsville, Tuscaloosa, Sparta, Demopolis, Montgomery, and Mardesville in Alabama, and at Washington, Augusta, Jackson, Grenada, and Columbus in Mississippi, Colonel Rogers made his report, and presented his account for his services, amounting to \$6,449 60. This account was examined and allowed for the sum of \$4,456 70, thus disallowing the sum of \$1,884 60. The reasons for this decision will appear from the annexed statement from the General Land Office:

*Statements in relation to the account rendered by John A. Rogers, Esq.,
Examiner of Land Offices in Alabama and Mississippi.*

The number of days charged by him is as follows:

	Days.
Examining office at Columbus, Mississippi, from October 6, 1841, to February 14, 1842.....	132
Examining office at Demopolis, Alabama, from February 18 to 25, 1842.....	8
From March 10 to 28, 1842.....	19
—	27
Examining office at Tuscaloosa, Alabama, from February 26 to March 9, 1842.....	12
Examining office at Cahaba, Alabama, from April 1 to 14, 1842.....	14
From April 29 to June 16, 1842.....	49
—	63
Examining office at Montgomery, Alabama, from April 15 to 28, 1842.....	14
Examining office at Sparta, Alabama, no dates given, supposed from June 21 to July 2, 1842.....	10
Examining court records at Mobile, Alabama, no dates given, supposed from July 3 to 11, 1842.....	8
Examining office at St. Stephen's, Alabama, from July 12 to 29, 1842.....	15
Examining office at Washington, Mississippi, from August 2 to 16, 1842.....	15
Examining office at Jackson, Mississippi, from August 18 to September 3, 1842.....	17
From September 17 to October 8, 1842.....	22
—	39
Examining office at Augusta, Mississippi, from September 5 to 14, 1842, and four days after September 14.....	14
Examining office at Grenada, Mississippi, from October 10 to December 10, 1842, and four days after December 10.....	66
Examining office at Huntsville, Alabama, from January 5 to 29, 1843.....	25
From March 19 to April 12, 1843.....	24
—	49
Examining office at Lebanon, Alabama, from January 31 to March 12, 1843.....	41
Assisting in preparing his instructions at the General Land Office previous to starting, from August 2 to 21, 1841.....	21
Making out his reports on Lebanon and Huntsville.....	8
Making out his duplicate reports.....	15
Eight day's sickness, from June 18 to 25, 1842.....	8
Six day's sickness, from December 11 to 16, 1842.....	6
Six day's sickness, from March 13 to 18, 1842.....	6
—	20
—	572

Remarks on the foregoing charges.

1. The number of days charged for examining appears to be unnecessarily long, averaging forty-four days at each office, whereas the average time charged by the other examiners will not exceed twelve or fifteen days for each office. The time charged at Columbus, Demopolis, Cahaba, Jackson, Grenada, Huntsville, and Lebanon is particularly pointed out, as, with the exception of the first named place, no sufficient reason appears from the reports for the protracted delay. In addition to this a charge is made for every Sunday occurring during his examinations, as follows:

At Columbus.....	19 Sundays.	At Washington.....	2 Sundays.
At Demopolis.....	4 Sundays.	At Jackson	5 Sundays.
At Tuscaloosa.....	2 Sundays.	At Augusta.....	1 Sunday.
At Cahaba.....	9 Sundays.	At Grenada.....	9 Sundays.
At Montgomery.....	2 Sundays.	At Huntsville.....	8 Sundays.
At Sparta.....	2 Sundays.	At Lebanon.....	6 Sundays.
At St. Stephen's....	2 Sundays.		

In all amounting to seventy-one days, which in this proposed adjustment have been deducted. No deduction of time as charged by him for examining, other than this, has been made. Mr. Rogers states that "he frequently worked from 8 a. m. to 11 p. m.," and thinks that "as he did not confine himself to 'office hours,' that is, six hours per day," he "should be allowed this charge for Sundays; that it is unusual to deduct it," &c.

2. The charge for twenty days' sickness is deducted, because in his instructions no authority for such an allowance is given. His letter of appointment states that he will be allowed "\$8 per day while engaged in the examination," and it would seem to be a forced construction to make an allowance for a charge of this kind. The duty which examiners are appointed to perform is a specific one, unlike a regular or permanent employment, and if they happen to be taken sick during its continuance it is *their* misfortune. This office knows of no precedent for such an allowance, and it is therefore disallowed.

3. The charge for examining the records of the court at Mobile, in relation to the situation of certain suits against defaulting receivers in Alabama, is one for which no authority was given Mr. Rogers. He states, however, that he considered it necessary to do so, under that clause in his instructions requiring him to make "enquiries as regards any malversations whatever of officers, either present or those of recent years, whereby the government has sustained or is likely to sustain pecuniary damage." He also states that he reported the result of his examination to the Solicitor of the Treasury for his advisement. In this adjustment the charge is disallowed.

4. The charge for twenty-one days' services in assisting in preparing his instructions at this office previous to starting is deducted, for the reason that such service is not known to this office to have been needed or required—this office certainly being competent to prepare its own instructions without asking the aid of the one who was to be

instructed. Mr. Rogers, however, states that he was requested by Mr. Secretary Ewing to be present in the office during their preparation, but it is respectfully submitted whether this might not have been intended more for his own information as to the nature of his duties than for any assistance he could render this office. Two of the examiners, Mr. King and Mr. Noland, were here also previous to starting, but they have not charged anything for the time so spent.

5. In explanation of the charge for eight days engaged in making out his reports on Lebanon and Huntsville offices, Mr. Rogers states that it was not done at the time of the examination, for *want of stationery*. There is a charge made in account No. 18 for "examining the land office at Huntsville and *preparing reports*," which makes it appear that this charge of eight days was incorrect, so far as Huntsville report is concerned, but Mr. Rogers states that these reports alluded to were the *duplicates*. The charge is submitted for consideration.

6. In explanation of the charge for fifteen days' services in "making a general report and recording same, and preparing statement of accounts," Mr. Rogers states that he made out duplicate reports of all the examinations (which are now on file in this office) and also recorded them in a book, thus making triplicate copies, and it is for this last service that this charge is made. Throughout his accounts, viz: at Columbus, No. 1; at Tuscaloosa, No. 3; at Montgomery, No. 6; at Sparta, No. 8; at St. Stephen's, No. 10; at Augusta, No. 13; at Grenada, No. 15; at Huntsville, No. 18; and in the preceding charge, Lebanon and Huntsville, No. 19, a charge is made for preparing reports, which it is supposed is intended to mean the duplicates required by his instructions. It is not known that triplicate copies were required of Mr. Rogers, and his letter of appointment only calls on him to prepare duplicates. For these reasons this charge is suspended and submitted for further consideration.

7. In his account No 20 Mr. Rogers charges \$200 for cash paid A. L. Rogers, for assisting in the examination of the land offices at Cahaba, Columbus, and Demopolis, and for copying reports, &c., 66 $\frac{2}{3}$ days, at \$3 per day. No authority was given Mr. Rogers to employ assistance, and of course no allowance can be made for clerk hire. This amount is therefore deducted.

The amount of mileage charged by Mr. Rogers is as follows. The distances also as furnished by the Post Office Department are given:

	Miles, as charged by Mr. Rogers.	Distance, as fur- nished by Post Office Depart- ment.
Washington City to Columbus, Miss.....	1, 100	1, 121
Columbus, Miss., to Demopolis, Ala.....	200	104
Demopolis to Tuscaloosa, Ala.....	150	64
Tuscaloosa to Demopolis, Ala.....	150	64
Demopolis to St. Stephen's, Ala.....	150	90
St. Stephen's to Cahaba, Ala.....	400	142
Cahaba to Montgomery, Ala.....	150	58
Montgomery to Cahaba, Ala.....	150	58
Cahaba to Sparta, Ala.....	200	80
Sparta to Mobile, Ala.....	150	123
Sparta to St. Stephen's, Ala.....	95	86
St. Stephen's, Ala., to Washington, Miss.....	570	287
Washington to Jackson, Miss.....	200	103
Jackson to Augusta, Miss.....	116	116
Augusta to Jackson, Miss.....	116	116
Jackson to Grenada, Miss.....	120	126
Grenada, Miss., to Huntsville, Ala.....	400	267
Huntsville to Lebanon, Ala.....	85	49
Lebanon to Huntsville, Ala.....	85	49
Huntsville, Ala., to Washington City.....	940	1, 003
	5, 527	4, 106

Making a difference between the number of miles charged by him and the distances furnished by the Post Office Department of 1,421 miles, or \$426 30 at the rate of \$6 for every 20 miles, being the pay allowed him.

This route, however, is not allowed him in this adjustment, for the reason that it is unnecessarily long, following, in almost every instance, the course of the interior rivers, and in several cases retracing its own path without apparent cause, as will be seen by reference to the accompanying diagram, No. 1, whereon the route as charged by Mr. Rogers is marked down.

By his letter of appointment, Mr. Rogers was informed that he would be allowed at the rate of six dollars for every twenty miles' travel from his residence to the office at which the examination should commence, and thence from office to office until his return to his residence. From this phraseology it was supposed that he would understand that mileage was to be charged from each office to the *next nearest* office, and that travelling backwards and forwards between them, choosing the longest routes, would not be allowed.

If he had travelled from Columbus, Mississippi, (which office he was directed first to examine,) to the next nearest office in Mississippi, and thence on regularly through, by the nearest routes, to each of the other offices, (omitting the trip from Sparta to Mobile, which was

unauthorized, as stated in remark No. 3 on page 3, preceding,) his route would have been, as is laid down in the accompanying diagram No. 2, and the mileage would have been as follows, taking the distances as furnished by the Post Office Department, according to which all similar accounts in this office are adjusted, and which must form the basis of action in this case, in the absence of any other means of obtaining information correctly :

	Miles.
From Washington City to Columbus, Mississippi - -	1,121
From Columbus to Grenada, Mississippi - -	138
From Grenada to Jackson, Mississippi - -	126
From Jackson to Washington, Mississippi - -	103
From Washington to Augusta, Mississippi - -	177
From Augusta, Miss., to St. Stephen's, Alabama - -	110
From St. Stephen's to Sparta, Alabama - -	86
From Sparta to Montgomery, Alabama - -	103
From Montgomery to Cahaba, Alabama - -	58
From Cahaba to Demopolis, Alabama - -	79
From Demopolis to Tuscaloosa, Alabama - -	64
From Tuscaloosa to Huntsville, Alabama - -	147
From Huntsville to Lebanon, Alabama - -	49
From Lebanon, Ala., to Washington City - -	1,003
	3,364

The amount charged by him is 5,527 miles, making a difference of 2,163 miles, equal \$648 90.

If the deductions herein made be approved, the account will stand as follows :

The amount of the account of John A. Rogers, esq., as charged by him, is—

For 572 days' services at \$8 per day - -	\$4,576 00
For 5,527 miles at 30 cents per mile - -	1,658 10
For services of A. L. Rogers, 66 $\frac{2}{3}$ days, at \$3 per day -	200 00
For postage paid by him on public service - -	6 00
For specie boxes for Grenada office - -	6 00
For stationery for public service - -	3 50
	6,449 60

Deduct therefrom—

Seventy-one Sundays, charged at \$8 per day -	\$568 00
Twenty days' sickness, at \$8 per day -	160 00
Eight days examining court records at Mobile, at \$8 per day - -	64 00
Twenty-one days' services at General Land Office	168 00
Eight days making Lebanon and Huntsville re- ports - -	64 00
Fifteen days making duplicate reports, &c. -	120 00

Services of A. L. Rogers	-	-	-	-	-	\$200	00
Two thousand one hundred and sixty-three miles							
deducted, at 30 cents per mile	-	-	-	-	-	648	90
						\$1,992	90
Balance	-	-	-	-	-	4,456	70

He has received from the different receivers at the various offices \$4,565, leaving a balance due from him of \$108 30.

This matter was subsequently brought by Colonel Rogers to the attention of the Secretary of the Treasury, who made his decision, declining to open the account, on the 15th day of December, 1845. He then made application to Congress, and on the 7th of August, 1846, a bill was reported to the Senate allowing him the sum of \$1,884 64. On the 6th of February, 1849, a second bill was reported to the Senate, allowing only the sum of \$683 73. Your committee have not thought it necessary, in their view of the case, to enquire what action was had on either of these reports or bills.

On the 4th November, 1850, Colonel Rogers assigned his claim to his wife, Mrs. Ann Lucretia Rogers, the present applicant, who presented a petition to the present Congress. The case was still pending, however, before Congress, and on the 5th of May, 1852, an adverse report was made to the Senate, accompanied by a "*Resolved*, That the prayer of the memorial of John A. Rogers be rejected."

Mrs. Rogers has thought proper to renew the claim before this Congress in her own name, and the result is the bill now under consideration, allowing the sum of \$1,280 90; being eight dollars per day for 71 Sundays, (\$568,) and for 8 days examining records at Mobile, (\$64,) and mileage for 2,163 miles, disallowed at the Treasury Department, (\$648 90.) The subject of compensation for *Sundays* was presented to the House by this committee at the last session, in a report in the case of Samuel V. Niles, No. 431. The doctrine to be derived from the general practice in the various departments of the government seems to be this: When compensation is in the nature of a *salary* to be fixed by a rate per diem, then every day is computed without regard to the question whether the party is actually employed or not; but when the employment relates to some *special* service to be paid for at some stated rate per diem, during the days *actually employed*, then no compensation is allowed for Sundays. The nature and reason of the distinction, it is believed, will be obvious. The service of Col. Rogers falls clearly within the latter category. When appointed he was informed that he "would be allowed a compensation of eight dollars per day while engaged in the examination." We are bound to presume that a due regard to the sentiments of a Christian community, if not his own sense of propriety, would restrain him from making his official examinations on the holy Sabbath. Indeed, it is not pretended he was actually engaged in his duties on that sacred day, and upon the principles we have laid down he cannot be paid for such time.

The trip to Mobile was held not to fall within the provisions of his appointment. This decision was contemporaneous with the services rendered, and your committee see no sufficient reason why the decision of the department should be reversed.

From an examination of the two diagrams appended to the statement from the General Land Office, your committee believe that Col. Rogers was allowed mileage to the full extent to which he was entitled, either by the letter or the spirit of his instructions.

They therefore report back the Senate bill, with a recommendation that it do *not* pass.

LARNETT HALL.

JANUARY 7, 1859.—Ordered to be printed.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Larnett Hall, have had the same under consideration, and beg leave to report:

That the claimant was keeper of the light-house at Ned's Point, Massachusetts, in 1848. When appointed to this office he purchased of the keeper who had preceded him sundry improvements which had been made upon the premises at private cost, paying therefor, as is alleged, the sum of \$450. When he was afterwards removed by the government he claimed payment for these improvements. They were constructed at private expense, for *private* convenience and comfort, and without any authority of law. Mr. Hall may have paid the amount stated partially, no doubt, as an inducement to the incumbent to resign, and the improvements may have been worth the amount, but the transaction was one of a private character entirely, and one with which the government had nothing to do; and your committee therefore report back the case to the House, with a recommendation that the prayer of the petitioner be not granted.

JOHN M. GRANT, ADMINISTRATORS OF.

JANUARY 7, 1859.—Ordered to be printed.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following

R E P O R T.

The Committee of Claims, to whom was referred the claims of Nathan Carver and Lucy Gregory, administrators of John M. Grant, deceased, have had the same under consideration, and beg leave to report:

That the claim is for a house said to have been burned while in the occupancy of the United States troops in the year 1814. The claim was rejected by the Committee on Claims in 1823, and is now again revived after a lapse of thirty-five years, but without any additional testimony whatever. Your committee have carefully re-examined the case, and were it presented now for the first time, they can see no principles on which it could be allowed, admitting the facts to be as charged. The simple fact that the government becomes the tenant of an individual does not involve an insurance of the building rented against fire, particularly fire not occurring from the *military* occupancy of the premises. Your committee perceive no merit whatever in the demand, and therefore report back the claim to the House, and recommend that the same be rejected.

JOHN M. GRANT, ADMINISTRATOR OF

January 2, 1868 - Ourselves to be known.

Mr. S. MARSHALL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom were referred the claims of John M. Grant, administrator of the estate of John M. Grant, deceased, and the same under consideration, and they have to report:

That the claim is for a house said to have been burned while in the occupancy of the United States troops in the year 1844. The claim was rejected by the Committee on Claims in 1855, and is now again revived after a lapse of thirty-five years, but without any additional testimony whatever. Your committee have carefully re-examined the case, and were it presented now for the first time, they can see no principles on which it could be allowed, admitting the facts to be as charged. The simple fact that the government procures the rental of an individual does not involve an insurance of the building rented against fire, particularly the not occurring from the ordinary occupancy of the premises. Your committee perceive no merit whatever in the demand, and therefore report back the claim to the House, and recommend that the same be rejected.

IRA CARPENTER.

JANUARY 7, 1859.—Ordered to be printed.

Mr. MOORE, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Ira Carpenter, "praying compensation for damages sustained by him in the war of 1812," have had the same under consideration, and beg leave to report :

The petition alleges that during the war of 1812 he was damaged to the amount of twenty thousand dollars by the United States troops, at the town of Delaware, in the State of Ohio. The following is his bill of particulars :

UNITED STATES TO IRA CARPENTER,	Dr.
War 1812.—To use and destruction of large two-story frame house, (using it two years).....	\$3,000
Destruction of material for another house.....	1,500
To ruining one horse.....	100
To taking one yoke of oxen.....	120
To four acres of corn in 1812.....	540
To four acres of corn in 1813.....	240
Destroying fence and fixtures about premises for two years..	250
	5,450
Interest 44 years, at 6 per cent.....	14,388
	19,838

Your committee would look with distrust upon a claim of this kind even if well substantiated by proof; but this charge against the government is supported only by the certificate of a single individual, and if fully supported by proof, the case presents no valid claim for remuneration from the federal government. An additional objection to the claim exists in the fact that it has been before *nine* different Congresses, and has been uniformly reported on *adversely*. Such claims

never die, but rather acquire vitality from age; yet your committee deem it their duty to express their decided disapprobation of the practice of re-opening and re-examining cases so often disposed of adversely by Congress and its appropriate committees. They report back the case with a recommendation that the claim be rejected, and pray to be discharged from its further consideration.

IRA CARPENTER.

James T. Kent—Ordered to be printed.

Mr. Moore, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Ira Carpenter, "praying compensation for damages sustained by him in the war of 1812," have had the same under consideration, and say: In report:

The petition alleges that during the war of 1812 he was damaged to the amount of twenty thousand dollars by the United States troops, at the town of Delaware, in the State of Ohio. The following is his bill of particulars:

United States to Ira Carpenter.	
War 1812.—To use and destruction of large two-story frame house, (being it two years).....	\$3,000
Destruction of material for another house.....	1,500
To raising one horse.....	100
To taking one pole of oak.....	120
To four acres of corn in 1812.....	540
To four acres of corn in 1813.....	340
Destruction fence and fixtures about premises for two years..	250
5,450	
14,388	Interest 4 years, at 6 per cent.....
19,838	

Your committee would look with distrust upon a claim of this kind even if well substantiated by proof; but this charge against the Government is supported only by the certificate of a single individual, and it fully supported by proof, the case presents no valid claim for remuneration from the Federal Government. An additional objection to the claim exists in the fact that it has been before nine different Congresses, and has been uniformly reported on adversely. Such claims

JOSEPH H. JAMES.

JANUARY 7, 1859.—Ordered to be printed.

Mr. MOORE, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Joseph H. James, of the State of Vermont, have had the same under consideration, and beg leave to report :

The petitioner represents that he was a private soldier in the United States service (6th regiment of infantry) from the 21st day of October, 1816, to the 12th day of June, 1821, and prays that he may be allowed by Congress three hundred acres of public land for his said services. The petitioner had previously made application to the Pension Office for bounty land, which was refused upon the ground that no war existed between the time of his enlistment and his discharge, and that there was no law authorizing the allowance of bounty land—in which this committee concur, and pray to be discharged from the further consideration of said claim.

JOSEPH H. JAMES
1881

REPORT

JOSEPH H. JAMES

JOSEPH H. JAMES

REPORT

JOSEPH H. JAMES

JOSEPH H. JAMES

JOSEPH H. JAMES

W. C. REDDALL.

JANUARY 7, 1857.—Ordered to be printed.

Mr. H. F. CLARK, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred the memorial of William C. Reddall, praying for the passage of a special law authorizing the settlement of a dispute alleged to exist between himself and the United States, report:

The facts upon which the memorial rests are substantially the following:

The memorialist claims to be the owner of lands in the State of Maryland, situate upon the route surveyed by the United States, through which the aqueduct for conducting water from the Great Falls of the Potomac to the city of Washington is constructed. A portion of these lands have been condemned in accordance with the provisions of the statute of Maryland for this alleged public use, and many substantial differences of opinion have arisen between the memorialist and the officials of the federal government to whom the construction of the work has been intrusted.

The memorialist has ever insisted and still insists—

1. That the act of Congress directing the construction of the aqueduct is void, because the power asserted is not expressly authorized by the Constitution of the United States.

2. That the act of the legislature of the State of Maryland authorizing the expropriation of lands within her jurisdiction is void, because repugnant to the constitution of that State.

3. That the use for which the lands necessary to the construction of the aqueduct are sought to be appropriated is not a *public use* within the meaning of that term in the Constitution of the United States or the constitution of the State of Maryland.

The memorialist adduces these and other objections, both to the legislation of Congress in relation to the subject matter, and to the legislation of the State of Maryland in aid and furtherance of the enterprise, and has accompanied his presentation with that elaborateness of illustration and argument which the importance of the constitutional questions involved seemed to him to justify.

He represents that the State of Maryland failed to stay the exercise of its legislative power, when the same was sought in aid of an alleged proposed encroachment of the federal government, and refused to

enact a special law by means of which the constitutional questions claimed to arise could be settled promptly and satisfactorily in her judicial tribunals.

That the late Attorney General of the United States misconceived the principles of constitutional law arising in the case, and misadvised the late administration as to the application of those principles.

That both the late and present Secretaries of War have failed to guard with sufficient care the rights of the citizens, and that the President of the United States has omitted to cause to be applied to the right of the memorialist the state rights doctrines familiar to our people and advanced in his inaugural message.

The relief sought by the memorialist is the enactment of a law authorizing the settlement of the dispute upon the principles of justice and equity, and the payment out of the treasury of any award that may be made by the tribunal to be constituted by such enactment, and which shall determine the merits of the controversy.

Your committee have carefully considered the case and have diligently examined the voluminous papers accompanying the memorial. We have determined that it is inexpedient to attempt by any special enactment to reach the alleged injustice of the case.

We do not deem it incumbent upon your committee to express any opinion as to the legal and constitutional questions involved.

Congress has seen fit to make provision for the construction of the aqueduct, and if the act be unconstitutional, it is nevertheless an act done.

The State of Maryland, in the exercise of her sovereign power, has seen fit to surrender of her eminent domain enough to permit this alleged public improvement to be constructed within her borders, and must be presumed to have surrounded the provisions enacted by her legislature for the expropriation of the lands of her citizens with all necessary and reasonable safeguards. We must assume that a jury of her citizens will not permit private property within her borders to be appropriated to a public use without just compensation.

The work itself is well nigh complete. Your committee are not satisfied that the ordinary judicial tribunals of the country, State and federal, are insufficient for the protection of the rights and property of the memorialist. He can have resort to the State tribunals of Maryland against the alleged trespassers upon his lands, or those who assert title thereto acquired through the machinery of unconstitutional laws, and he is secured the right of having in the Supreme Court of the United States an adjudication of any question necessarily arising under the Constitution and laws of the United States.

The redress to which he may be entitled may be slow—may be expensive—but it is, perhaps, the misfortune of the memorialist to have been the owner of lands required for consecration to one of the public uses of the federal government.

Every man in the federal Union holds his title subject to be divested from a similar necessity, and if the State within which his lands are situate will not secure him in his constitutional rights—and the ordinary judicial tribunals of the country, State and federal, are inadequate for his protection—the case may be well deemed to be without remedy.

JOSEPH NOURSE, LEGAL REPRESENTATIVES OF.

JANUARY 7, 1859.—Ordered to be printed.

Mr. H. F. CLARK, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred the memorial of the legal representatives of Joseph Nourse, deceased, praying for the passage of an act directing the payment of the interest upon the amount of a judgment or decree alleged to have been rendered against the United States in favor of the said Joseph Nourse by the judge of the district court of the United States for the District of Columbia, on the 4th day of January, 1831, report:

The facts upon which this case rests are substantially the following:

Joseph Nourse was appointed Register of the Treasury in the year 1790, and continued in the discharge of the duties of that office until May 31, 1829, when he was removed. The Comptroller of the Treasury adjusted his accounts, and found a balance to be due from Mr. Nourse to the United States of \$11,769 13, being the aggregate of sundry balances of moneys remaining in his hands.

Mr. Nourse admitted the holding of the several balances as stated by the Comptroller, but claimed that he was entitled to be credited with a commission of $2\frac{1}{2}$ per centum upon all the moneys which had passed through his hands as the disbursing agent of the contingent expenses of the Treasury Department. The sums of money which Mr. Nourse, as such disbursing agent, had thus paid during the course of the thirty-nine years he held his office amounted to \$940,308 83, and he claimed to be allowed the sum of \$23,582 72 as usual and reasonable commission. If the commissions were allowed, the United States would be indebted to Mr. Nourse in the sum of \$12,331 96, while, if the commission was disallowed, he would be a debtor to the United States in the sum of \$11,769 13.

The accounting officers of the treasury disallowed the claim for commission on the ground that the charge was not authorized or sanctioned by law, and required from Mr. Nourse the payment of the balance, which, in the event of such disallowance, was conceded to be due.

This demand not being complied with, the agent of the treasury had recourse to the provisions of the act of May 13, 1820, entitled, "An act for the better organization of the Treasury Department," (Statutes at Large, vol. 3, p. 592,) and issued his warrant to the marshal of the District of Columbia, commanding him to collect the amount of the alleged balance, \$11,769 13, by distress and sale of the property of Mr. Nourse. The warrant was actually levied.

Upon the issuing of this warrant, Mr. Nourse, conceiving himself to be aggrieved, availed himself of the provisions of the fourth section of said act, and preferred a bill of complaint to the district judge of the United States for the District of Columbia, praying an injunction against further proceedings upon the warrant.

In this bill of complaint Mr. Nourse alleged, in substance, that in addition to the regular duties of Register, as prescribed by the act of Congress creating the office, he had, from about the period of his appointment up to the time of his removal, been charged by the several Secretaries of the Treasury with the care and disbursement of the contingent funds of the department, and with the settlement of the various accounts connected therewith. That the performance of this duty devolved upon him labor and responsibility independent of that alleged by him to be properly appertaining to his office of Register, and occupied a considerable portion of his private hours; and that a usage had existed in the Treasury Department and in other departments from the time of the organization of the government, in obedience to which commissions or per centage were allowable to officials and clerks of the department, notwithstanding such officials or clerks were in the receipt of salaries fixed by law. That as early as the year 1800 he had claimed compensation for this kind of service, (regarded by him as extra,) but that no provision had been made by law to meet the alleged justice of the case.

The bill claimed that there was a balance justly and equitably due from the United States as a reasonable and usual commission upon the sums of money so disbursed, and prayed for an injunction staying altogether the proceedings upon the warrant.

The district judge granted the injunction.

The district attorney of the United States subsequently interposed an answer to the injunction bill, (notwithstanding, by the express provision of the fourth section of the act of May 15, 1820, such answer was not necessary,) alleging, in such answer, that the commissions claimed were not authorized by law; and therein requesting that the injunction be dissolved, and that the United States be permitted to pursue their legal remedies for the recovery of their demand.

From this period the case seems to have been treated as an ordinary suit in equity for a settlement of the accounts between Mr. Nourse and the United States; and the question does not seem to have been raised, whether it was the intention of the act of Congress of May 15, 1820, to confer upon the district judge the jurisdiction to hear the case upon its merits, and render a decree for money against the United States, or merely to authorize the district judge to interfere summarily, and prevent the abuse of the anomalous power conferred by the act upon the agent of the treasury.

it appears that, on the 20th of December, 1830, the district judge, seeming to treat the case as a suit in which his jurisdiction was general, and not restricted to the limited power of granting or dissolving the injunction, made an order or decree, founded upon the bill and the answer, and upon evidence admitted by the parties, adjudging that Mr. Nourse had, for a long course of years, rendered services and made disbursements of money for the United States at the request, from time to time, of the Secretaries of the Treasury for the time being; and that such services and disbursements were over and above those required by the duties of his office as Register of the Treasury, and that such services remained uncompensated; and, further, directing that certain auditors, then named in the decree, should ascertain the value of the services and fix the compensation and report to the court.

The auditors thus appointed made a report to the court on the 31st day of December, 1830, which your committee here embody, as containing a statement of the several alleged services upon which the claim of Mr. Nourse is founded:

“ALEXANDRIA, *December* 31, 1830.

“In the case of Joseph Nourse against the United States of America, before the district court of the District of Columbia.

“The subscribers, appointed auditors by the decree of the court in the above cause, made on the 20th day of this month, of which a copy is annexed, to value the services of the complainant and the compensation to which he is equitably entitled for the same, and for disbursements of public money made by him, at the request of the United States, through the respective Secretaries of the Treasury for the time being, over and above the services required by the duties of his office of Register of the Treasury of the United States, respectfully report: That it appears from the documents and evidence submitted to them that from the 10th of April, 1790, to the 31st of May, 1829, thirty-nine years one month and twenty-one days, the complainant, as agent for the payment of contingent expenses of the Treasury Department, for stationery and printing of public accounts, for payment of the superintendent and watchmen of the State and Treasury Departments, for miscellaneous disbursements, comprising fifteen different agencies, for advances made to sundry persons who brought from the several States the votes for Presidents and Vice Presidents of the United States, and on account of the Congressional Library, disbursed the sum of nine hundred and forty-three thousand three hundred and eight dollars and eighty-three cents, the services rendered in which said agencies and in making said disbursements were over and above the services required of him by the duties of his office as Register of the Treasury of the United States. We find that for similar services, where no special provision had been made by law, a commission of two and a half per cent. has been heretofore in many cases allowed at the treasury of the United States, and we are of opinion that a commission of two and a half per cent. on the said sum of nine hundred and forty thousand three hundred and eight dollars and eighty-three

cents, amounting to the sum of twenty-three thousand five hundred and eighty-two dollars and seventy-two cents, is an equitable compensation for the services so as aforesaid rendered to the United States by the said Joseph Nourse, and that the said services are equitably worth the said last mentioned sum.

“ All which is respectfully submitted.

“ R. J. TAYLOR,
“ PHINEAS JANNEY,
“ COLIN AULD.”

On the 4th day of January, 1831, the district judge made the following decree, founded upon the bill, answer, proofs, and the report of the auditors :

“ And at a court continued and held for the said district, the 4th day of January, 1831, the auditors, Robert J. Taylor, Phineas Janney, and Colin Auld, to whom, by an interlocutory order of this court, bearing date December 20, 1830, it was referred to ascertain the value of the services rendered by the complainant to the defendant, over and above the regular official duties attached to his office of Register of the Treasury of the United States, as set forth in said interlocutory order as aforesaid, having made and returned their report to the court, bearing date the 31st day of December, 1830, in and by which the said auditors state, among other things, that a commission of two and a half per cent. upon the sum of nine hundred and forty-three thousand three hundred and eight dollars and eighty-three cents, amounting to the sum of twenty-three thousand five hundred and eighty-two dollars and seventy-two cents, is an equitable compensation for the services so as aforesaid rendered to the United States by the said Joseph Nourse ; and that the said services are equitably worth the said last mentioned sum, and no sufficient reasons having been presented to the court against the confirmation of said report of said auditors, it is thereupon, this 4th day of January, 1831, ordered, adjudged, and decreed that the said report be, and the same is hereby, in all particulars, confirmed and made absolute.”

“ And the said cause now also coming on for final decision upon said report, and the bill, answer, replication, exhibits, depositions, and other evidence admitted by the parties, and upon the equity reserved under and by the said interlocutory order, it is further ordered, decreed, and adjudged that the injunction heretofore granted in this cause be, and the same is hereby, perpetuated ; and that the said defendants be, and they are hereby, perpetually enjoined from proceeding further against the complainant upon the warrant of distress in the bill mentioned, for or on account of a claim or demand for the recovery of which the said warrant of distress issued.”

This decree is the judgment upon which the payment of interest is now claimed in behalf of the representatives of Mr. Nourse.

In this connexion we may observe that the United States appealed from this decree of the district judge to the circuit court of the United States for the District of Columbia, and upon such appeal the

circuit court rendered judgment of affirmance. From this judgment of affirmance rendered by the circuit court for the District of Columbia the United States took an appeal to the Supreme Court of the United States, where such appeal was dismissed on the grounds,

1. That the proceeding before the district judge under the act of May 15, 1820, was special and limited, and was not the subject of appeal by the United States.

2. That the circuit court of the United States for the District of Columbia had no jurisdiction to entertain the appeal taken in behalf of the United States from the decree of the district judge.

3. And that therefore the Supreme Court of the United States had not jurisdiction in the case.

The merits of the case were not reviewed by the Supreme Court of the United States.

Mr. Nourse subsequently applied to Congress for the payment of the balance which, upon the basis of the report of the auditors, was alleged to be due him, and on the 28th of June, 1848, and subsequently to the death of Mr. Nourse Congress passed the following act:

“An act to authorize the settlement of the account of Joseph Nourse, deceased.

“*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the accounting officers of the treasury be, and are hereby, authorized to settle the account of Joseph Nourse, in conformity with the award and decree of the district court of the United States for the District of Columbia, as affirmed by the Supreme Court of the United States; and that any balance which may be found due him on said decree be paid to his legal representatives out of any money in the treasury not otherwise appropriated.

“Approved June 28, 1848.”

It would appear from the phraseology of the act that Congress assumed that the district court of the United States for the District of Columbia had made a decree in favor of Mr. Nourse which was obligatory upon the United States, and that such decree had been affirmed by the Supreme Court of the United States.

Under and in pursuance of this act of Congress there was a resettlement of the accounts, and there was paid to the legal representatives of Mr. Nourse on the 5th of July, 1848, the sum of \$12,331 96, being the balance of the \$23,582 72, (the amount of the claim for commissions,) less the sum of \$11,250 76, conceded to have been chargeable to him. The following is a copy of the account as settled July 5, 1848:

“No. 98956.

TREASURY DEPARTMENT,
First Auditor's Office, July 5, 1848.

I hereby certify that I have examined and adjusted an account between the United States and Joseph Nourse, late Register of the Treasury, his general account, and find that he is entitled to credit—

By this sum as the amount of the award and decree of the district

court of the United States for the District of Columbia, as affirmed by the Supreme Court of the United States, being his commissions at $2\frac{1}{2}$ per cent. on \$943,308 83, amount of his disbursements in his several accounts as disbursing agent of the Treasury Department, heretofore disallowed and now allowed under and in pursuance of the act of the 25th June, 1848..... \$23,582 72

I also find he is chargeable on said account, to balance due from him per report No. 56,024..... 11,250 76

Leaving due to the said Joseph Nourse, deceased, which is payable to Charles J. Nourse, attorney of Mary Nourse, executrix of Joseph Nourse, deceased, under and in pursuance of the "act of the 28th June, 1848," a balance of..... 12,331 96

23,582 72

as appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

WM. COLLINS,
First Auditor.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance, this 5th of July, 1848.

J. W. McCULLOUGH,
Comptroller.

"To the REGISTER OF THE TREASURY."

Joseph Nourse, late Register of the Treasury, his general account in account with the United States.

Dr. To balances due from him per report No. 56,024----- Leaving due Joseph Nourse, deceased, payable to Charles J. Nourse, attorney of Mary Nourse, administratrix of Joseph Nourse, deceased, under and in pursuance of the act of June 28, 1848, a balance of-----	\$11,250 76 12,331 96 23,582 72	Cr. By this sum, being his commissions of 2½ per cent. on \$943,308 83, the amount of his disbursements of pub- lic moneys in his several agencies of the Treasury Department, commencing in the year 1779, and end- ing in 1829, heretofore disallowed, and now allowed in pursuance of the act of June 28, 1848, entitled an act to authorize the settlement of the account of Joseph Nourse, deceased, which is in conformity with the award and decree of the district court of the United States in the District of Columbia, as affirmed by the Supreme Court of the United States-----	\$23,582 72
Amount disbursed on account of contingent expenses of the department----- Amount disbursed for stationery and printing public accounts----- Amount disbursed on account of the Congressional Library. Amount disbursed for paying superintendents of State and Treasury Departments----- Miscellaneous disbursements, comprising fifteen agencies. Advances made to sundry persons who brought from the several States the vote for President and Vice President of the United States-----	766,992 21 49,237 37 40,468 98 17,230 48 51,522 29 17,857 50 943,308 83		

GEORGE H. JONES.

FIRST AUDITOR'S OFFICE, July 5, 1848.

TREASURY DEPARTMENT, Register's Office, January 20, 1858.

I certify the foregoing to be true copies of original report and statement numbered 98,596, now on file in this office.

F. BIGGER, Register.

Application is now made for the passage of a law directing the payment from the treasury to the legal representatives of Mr. Nourse of the interest at the rate of six per cent. per annum from January 4, 1831, upon the amount \$12,331 96 allowed and paid in pursuance of the act of Congress of June 28, 1848.

The claim for this interest was presented. The First Auditor acted upon the claim and disallowed it, July 26, 1849. The account for the interest is still before the Comptroller of the Treasury, not acted upon.

It is insisted in support of the application that the act of 1848 in directing the settlement of the accounts of Mr. Nourse in conformity with the decree of the district judge, and in providing for the payment of any balance which may be found to be due to him on said decree, has determined the question of the claim for interest, and that nothing remained to be done but to carry out the intent of the law. If this be so there can be no need of further legislation. If a computation of the interest upon the sum reported by the auditors appointed by the district judge is essential to the ascertainment of the amount due in accordance with the principles settled by the act of Congress, the remedy of the petitioners is with the accounting officers of the treasury, who, under the advice of the Attorney General, will, it is to be presumed, construe the law according to its legal intent.

If, however, the proper construction of the act leaves the matter of the interest unprovided for, the question arises whether the Congress of 1848, which had the whole subject matter of principal and interest before them, did not virtually determine against the claim for interest.

Your committee do not deem it to be their duty to determine what is the true construction of the act of 1848. Regarding the application as resting upon the facts hereinbefore stated, we think the claim for interest not meritorious.

We are of opinion that the judge of the district court for the District of Columbia had not the jurisdiction to render any judgment or decree for money against the United States, and that no such judgment or decree was in fact rendered.

The district judge was specially empowered to stay by his injunction the proceedings upon the warrant issued by the agent of the treasury, and with this his power ceased. It was not the contemplation of the act that the district judge, to whom the alleged delinquent public officer might make application for relief against the harsh and summary process of the agent of the treasury, should thereby become endowed with the jurisdiction of determining the justice or injustice of the claim in controversy, except in so far as might be necessary to enable him to prevent the warrant prescribed by the act of 1820 from being made the instrument of wrong. Nor, in our opinion, did the issuing of the warrant and the subsequent application to the district judge by bill for injunction confer upon the judge or upon his court the power and jurisdiction to hear and determine the claim of Mr. Nourse against the United States, or to render judgment against the United States. The issuing of the warrant and the application to the judge for the injunction gave him the limited and special power to control the warrant by his injunction and nothing more.

Nor did the district judge in fact attempt to make any decree beyond granting a perpetual stay of proceedings upon the warrant. This much he had the jurisdiction to do.

It is unnecessary to consider what may have been the legal effect of the proceedings before the district judge upon the right of the United States to prosecute by ordinary action the claim against Mr. Nourse, which the agent of the treasury attempted to enforce by means of the special provisions of the act of 1820. The action of the district judge may have so affected the claim which was thus subjected to his special jurisdiction as to have barred the United States from the right to recover it against Mr. Nourse in the ordinary tribunals; but in our opinion there is no basis for the claim that the decree of the district judge in this case is to be regarded as the decree or judgment of a court of competent jurisdiction. It stayed the warrant of distress, and it could do no more.

There was then no judgment against the United States nor was there jurisdiction to render any. The claim of the petitioners for this interest, so far as the same rests upon a judgment, is therefore without foundation; and it is unnecessary to consider the principles which ought to control the government in dealing with the matter of interest upon established claims, whether evidenced by a record of judgment or otherwise.

It was undoubtedly competent for Congress to direct the adjustment of the accounts of Mr. Nourse in conformity with the decision of the auditors, whose report had satisfied the district judge that the proceedings upon the warrant should be stayed, and this without giving to the report of the auditors or to the injunction of the judge the force and effect of a judgment or decree of a competent tribunal.

It would be out of place for your committee to express any opinion upon the merits of the claim of Mr. Nourse to his commission of $2\frac{1}{2}$ per cent. upon the large sums disbursed by him during the tenure of the office. Mr. Nourse and his representatives have been paid the whole. The amount due for his commissions remained unsettled and unliquidated between Mr. Nourse and the government until 1848, when Congress in its discretion saw fit to recognize the auditors' report of 1831 as a basis of such liquidation, and then, for the first time, was there such an adjustment as would have laid the foundation of a claim for interest, had the transaction been one between individuals. Interest upon unsettled and unliquidated accounts is not recoverable against individuals. It is expecting too much to seek it from the government, especially when the application comes as in this case after the payment of the principal.

Our conclusion is, that if the act of 1848 directed the payment of the interest there is no need of further legislation.

If otherwise, we are nevertheless of opinion that the claim for interest is without foundation, and we report adversely.

LAND ENTRIES IN LOUISIANA.

[To accompany Bill S. 327.]

JANUARY 7, 1859.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, concurring in the report of the Senate's committee, adopt it as their own, and instruct me to report back to the House, with a slight amendment, Senate bill No. 327, and to ask its adoption.

IN THE SENATE OF THE UNITED STATES, *June 1, 1858.*

Mr. BENJAMIN made the following report:

The Committee on Private Land Claims, to whom was referred Senate Bill No. 327, to affirm certain entries of land in the State of Louisiana, report:

That the lands referred to in the bill were reserved for naval purposes by the President of the United States, in 1820. The live oak on the land has since been removed for the purposes of the government, and the fact of the reservation was forgotten, so that the land officers permitted the entry of and payment for the lands in question some fifteen or twenty years ago. These entries have been cancelled in the General Land Office in Washington, because illegally made; but as the sole purpose of the government has been accomplished, the committee see no reason to disturb the present possessors, who hold in good faith under a purchase allowed by the proper officers of the government, and who have improved the lands on the faith of that possession. The committee, therefore, recommend the passage of the bill.

LANDS BELONGING TO THE GOVERNMENT

IN THE STATE OF TEXAS

FOR THE YEAR 1882

The Commission on the Lands of the State of Texas, created by the act of the Legislature of 1879, Chapter 10, Section 1, has the honor to submit to the Legislature the following report.

REPORT

The Commission on the Lands of the State of Texas, created by the act of the Legislature of 1879, Chapter 10, Section 1, has the honor to submit to the Legislature the following report.

ALBANY, N. Y., JANUARY 1, 1883.

During the year 1882, the Commission on the Lands of the State of Texas, created by the act of the Legislature of 1879, Chapter 10, Section 1, has the honor to submit to the Legislature the following report.

The Commission on the Lands of the State of Texas, created by the act of the Legislature of 1879, Chapter 10, Section 1, has the honor to submit to the Legislature the following report.

During the year 1882, the Commission on the Lands of the State of Texas, created by the act of the Legislature of 1879, Chapter 10, Section 1, has the honor to submit to the Legislature the following report.

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ANSON DART.

[To accompany Bill S. 181.]

JANUARY 7, 1859.

Mr. COLFAX, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred Senate Bill No. 181 "for the relief of Anson Dart," late superintendent of Indian affairs in Oregon, respectfully report:

That Mr. Dart was appointed such superintendent in the year 1850, and served in that capacity for the term of nearly three years; that during the period of his service he had under his superintendence the Indian affairs of all the country now included within the Territories of Oregon and Washington; that he was a faithful officer, and discharged his duties in a manner highly satisfactory to the government; and that during the whole of his superintendency peace and quiet were maintained amongst all the Indian tribes under his care, and also between them and their white neighbors; that at the time of his appointment the salary affixed to the office was twenty-five hundred dollars per annum; but he was assured by the Indian Bureau and by the Committee on Indian Affairs of the Senate that a bill which was soon to be reported, establishing the office and the pay of superintendent of Indian affairs in California, should be made to include Oregon also; that such provision had the sanction and approval of the Indian Bureau, but by accident or oversight the bill passed for California alone, fixing the salary of its superintendent at \$4,000, without changing that of Oregon.

The evidence before the committee shows that Mr. Dart would not have accepted of this office had it not been for positive assurances that he should receive the same compensation for his services in Oregon that should be given to the same grade of office in California; and it is a matter of public notoriety that at that time the cost of living in Oregon was almost as great as it was in California.

It is also in evidence before the committee that Mr. Dart, while superintendent, negotiated no less than thirteen Indian treaties, saving to the government the usual expense of commissioners for their negotiation; that he was the disbursing officer for six Indian agencies;

that during his term not a cent of money was expended to quell Indian difficulties ; and that the expenses of the superintendency were not over one-fifth as much as in California at the same time, with about the same number of Indians.

Letters are also submitted from Hon. D. R. Atchison, then chairman of the Senate Committee on Indian Affairs, Hon. Thomas Corwin, then Secretary of the Treasury, and Hon. Luke Lee, then Commissioner of Indian Affairs, all corroborating the statement that Mr. Dart accepted the office with the express understanding that his salary should be made the same as that of the California superintendent. The present bill, however, makes it five hundred dollars per year less, which is satisfactory to the claimant.

Your committee would further report that, from an examination of the voluminous evidence accompanying the bill, they are satisfied that Dart has a just and equitable claim against the United States for moneys paid out of his own pocket and expenses incurred for the board of interpreters and hire of clerks employed by him as such superintendent, and are of opinion that the proper accounting officers of the Treasury Department should be authorized to settle with him upon principles of equity and justice, so as to indemnify him for the expenses thus incurred.

The committee therefore recommend the passage of the Senate bill for his relief without amendment.

ROBERT SANFORD—ADMINISTRATOR DE BONIS NON OF.

[To accompany Bill H. R. No. 767.]

JANUARY 7, 1859.

Mr. STANTON, from the Committee on Military Affairs, made the following

R E P O R T .

The Committee on Military Affairs, to whom was referred the petition of John F. Sanford, administrator de bonis non of Robert Sanford, deceased, respectfully report :

That they find from the petition and proofs in the case that the dwelling house situated on Nomony river, in Westmoreland county, Virginia, on a farm known as "Walnut Farm," which belonged to the heirs of Robert Sanford, deceased, was at least on one occasion, prior to the time when it was destroyed, occupied by the Virginia militia as barracks ; that on the 18th of July, 1814, sundry barges exceeding twenty in number, filled with British troops, passed up the Nomony river to a point above Walnut Farm.

Upon the intelligence of this ascent being disseminated through the country, a company of the 111th regiment Virginia militia was hastily collected at Walnut Farm on the next day, with a view of intercepting or annoying the enemy on their return.

On the return of the enemy the next day they landed at Walnut Farm, and on their approach to the house they were fired on by some forty or fifty of the militia who were stationed in the dwelling house and the adjacent out-houses, who immediately retreated in consequence of the superiority of the attacking force.

The enemy immediately set fire to the dwelling house and all the out-houses, which, with their contents, were totally destroyed.

There was no proof as to the value of the buildings, and if there was, the committee suppose it could hardly be claimed by the administrator that he was entitled to the value of them.

But the proofs show that the personal property destroyed in the dwelling house and out-houses was worth four hundred and sixty-three dollars, for which sum a bill is herewith reported.

REPORT
OF THE
COMMISSIONERS OF THE
LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE HOUSE OF REPRESENTATIVES
ON JANUARY 12, 1870

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ON JANUARY 12, 1870

BENJAMIN AND THOMAS LAURENT.

[To accompany Bill H. R. No. 768.]

Mr. STANTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Benjamin and Thomas Laurent, now report:

That the petitioners are British subjects, who had been domiciled in the city of Mexico for some twenty years prior to the commencement of the late war between the United States and the republic of Mexico.

They still retained their national character, however, by annually taking out license from the government of Mexico to trade as foreigners.

They were wine merchants, manufacturers of glass and porcelain, and kept in the heart of the city what would in this country be called an extensive and fashionable restaurant of the first class.

They were engaged, to all appearances, in a flourishing and prosperous business, using a capital in the various branches of their business amounting in the aggregate to upwards of \$100,000, with a very extensive credit and high social position.

Their principal business establishment was in the heart of the city, in buildings owned by a religious corporation, called the "Convent of the Immaculate Conception," from whom they rented the premises they occupied.

By virtue of two acts of the Mexican Congress—one passed on the 11th of January, 1847, and the other on the 4th of February of the same year—the president or minister of finance was authorized to sell property held in mortmain by religious corporations, for the purpose of raising funds to carry on the war with the United States.

In pursuance of this law, notice was given to the petitioners that they must thereafter hold under and pay rents to the government until the property could be sold. The petitioners thereupon made propositions to the government for the purchase of the property at \$26,000, payable in instalments.

While the negotiations were pending, a domestic revolution in Mexico brought General Santa Anna into power; and under his administration the laws authorizing the confiscation of property held in mortmain were repealed.

In this condition of things the city of Mexico was taken by the army of the United States under General Scott.

It appears that General Scott took into his service at Puebla a Mexican by the name of M. Garcia, who went with him to Mexico in the capacity of interpreter.

Soon after the arrival of General Scott in the city of Mexico this Garcia informed Lieutenant Colonel George W. Lay, General Scott's military secretary, that he could give information where a large debt was due to the Mexican government that might be confiscated as prize of war if he were allowed a liberal share of it. This was agreed to, and he informed Colonel Lay that there were \$26,000 due to the government from the petitioners for the purchase money of the property in which they were doing business.

General Scott at once issued the necessary orders, and the petitioners were required to pay the amount alleged to be due to the Mexican government to General Scott for the use of the United States; but inasmuch as it was payable in instalments, and but a small part of it was due, General Scott agreed to take \$15,000 in cash, and give petitioners a receipt in full for the \$26,000.

Garcia was furnished with the necessary papers, including General Scott's receipt for \$26,000, and upon them received the \$15,000 from a broker on the check of petitioners.

He paid \$7,000 into the military chest of the army of the United States, retaining \$8,000 "for himself and a number of others."

As the committee were not informed who those "others" were that received a portion of this sum, they thought it possible that there might have been some collusion between Garcia and the Laurents, and that they might have had a share of this large discount. With the view of determining this question, Colonel Lay was called upon and examined orally before the committee.

It appeared from the examination of Colonel Lay that this transaction had been incidentally inquired into by a court of inquiry called by General Scott in the city of Mexico in January, 1848, for the purpose of investigating certain charges against Captain McIntstry, the record of which, with all the evidence, was on file in the War Department.

The committee had this record examined and all the evidence touching this transaction copied and filed with the papers in this case.

But nothing has been developed by these examinations to warrant any imputation of collusion or bad faith on the part of the petitioners.

The petitioners seem to have acquiesced very cheerfully in the requisition of General Scott.

By paying to him as commander-in-chief of the American army they saved \$11,000 of the purchase money which they had agreed to pay the Mexican government.

But your committee suppose their main reason for preferring to make payment to, and receive their title from, the government of the United States was, that they had greater confidence in the ability of our government to maintain them in their title and possession against the Mexican church than in any of the fleeting dynasties or parties

that were succeeding each other with so much rapidity in the government of Mexico.

Immediately after the evacuation of Mexico suit was instituted in the Mexican courts by the Convent of the Immaculate Conception to recover possession of the property.

The petitioners applied to Mr. Letcher, then American minister in Mexico, to sustain them in their title.

He forwarded their application to our Secretary of State, with a strong representation in their favor.

In reply, Mr. Webster stated that the question of title must be settled by the municipal laws of Mexico, and that our government had no right to interfere.

Judgment was rendered against the petitioners, and confirmed by the court of last resort, to which they appealed.

The costs amounted to over \$7,000, and the petitioners were ousted from the premises at the point of the bayonet.

The influence of the church was brought to bear against them in their social and business relations.

They incurred great popular odium on account of their having received their title from a foreign invader and from a general suspicion that they were favorable to the Americans during the occupancy of the city by the American army, which suspicion your committee have no doubt was well founded.

Their business and credit were destroyed, and their property sacrificed at forced sales for the payment of costs and charges arising out of their suits, and in less than two years they were totally and hopelessly insolvent.

Upon this state of facts the petitioners ask indemnity, first,

for the value of the property.....	\$71,400
Improvements.....	6,300
Costs of suit.....	7,800
Further costs, &c.....	10,500
Rents refunded.....	16,250
Making.....	112,000

The United States has taken the money of these petitioners by force and strong hand, and are bound by every principle of honesty, good faith, and international law, to refund it. Their title to the property which we put them in possession of has failed, and they have been evicted, and therefore we should refund the purchase money.

We believe it is well settled that the rule of damages for breach of covenants of warranty is, the purchase money with interest from the time the party was evicted.

The committee can find no safe principle that will authorize them to go further.

Costs may sometimes be recovered on breach of warranty; but the government was in no proper sense a warrantor of the petitioner's

title. His claim is for the unlawful and improper appropriation of his money to our use.

The amount the petitioners are entitled to is the amount they paid.

They cannot claim \$26,000 because that amount was due to the Mexican government, and covered by General Scott's receipt; nor can we reduce it on account of only \$7,000 having gone into our military chest, as the residue was used by our authorized agent, whether rightfully or not. As to improvements, rents, and other consequential damages, they do not come within any recognized principle which the committee would consider it safe to adopt.

But inasmuch as the petitioners have been compelled to pay rents for the property for the time they occupied it under the possession derived from us, it would be just to pay them interest from the time we received their money.

The committee accordingly report a bill for \$15,000, with interest from the 11th day of November, A. D. 1847.

CHARLES STILLMAN.

[To accompany Bill H. R. No. 769.]

Mr. STANTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Charles Stillman, now beg leave to report:

The proofs before the committee serve to show clearly that at the commencement of the late war with Mexico the petitioner was a resident of Matamoras, in the republic of Mexico, and the lessee of the ferry across the Rio Grande at that place, and the owner of a chaland or ferry-boat, used in the transportation of passengers and freight across the river.

That a few days before the capture of that place by the American troops under General Taylor, in 1846, the petitioner, as well as all other American citizens, was expelled from that place by virtue of a proclamation of General Ampudia, the Mexican general in command of that department. That during his absence his boat was seized by the officers in command of the army of the United States, and used in the transportation of troops and army stores at the capture of Matamoras, and detained and used as a ferry-boat during the occupancy of that place by the army of the United States until it was worn out.

A letter from the Third Auditor of the Treasury, however, states that the proofs before him on the application of the petitioner to that office show that the boat was first captured by the Mexican army, and recaptured by our troops from the Mexicans, and that for that reason the claim was disallowed by that office.

The committee have not called for that proof, because, in the view which they have taken of the case, they do not consider it material.

Although the government is not bound to indemnify or make compensation to a citizen for property captured or destroyed by an enemy in time of war, yet, if it is recaptured by our government, the title of the owner is revived, and he may reclaim it; or, if it is retained for public use, compensation must be made to the owner.

Two witnesses and the petitioner testify that the boat was worth eight hundred dollars. But the builder of the boat, whose testimony is taken by the petitioner, testifies that it was worth five hundred dollars, and that he sold it to the petitioner for that sum.

The committee therefore report a bill for that amount.

CHARLES STELLMAN.

REPORT

Mr. STELLMAN, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Charles Stellman, for pay for his services, report:

The facts before the committee were to show clearly that at the commencement of the late war with Mexico the petitioner was a captain of volunteers in the service of the United States, and the facts of the war show that he was at that place, and the facts of a dispatch of his name, and in the transportation of provisions and troops to the front.

That a few days before the capture of that place by the American troops under General Taylor, in 1846, the petitioner, as well as all other American citizens, was expelled from that place by virtue of a proclamation of General Ampudia, the Mexican General in command of that department. That during his absence his home was seized by the officers in command of the army of the United States, and used as a depot for the transportation of troops and army stores at the expense of the United States, and he was not allowed to return until the occupation of that place by the army of the United States until it was worn out.

A letter from the Third Auditor of the Treasury, however, states that the petitioner claims on the signature of the petitioner to that effect, and that the fact was that captured by the Mexican army, and transported by one troop from the Mexicans, and that for that reason the claim was disallowed by that office.

The committee have not called for that proof, because, in the view of the facts before them, they do not consider it material.

Although the government is not bound to indemnify or make compensation to a citizen for property captured or destroyed by an enemy in time of war, yet it is recognized by our government, the title of the property is retained, and he is entitled to it; or, if it is retained for public use, compensation must be made to the owner.

Two witnesses and the petitioner testify that the fact was worth eight hundred dollars. But the number of the land, whose testimony is taken by the petitioner, testifies that it was worth five hundred dollars, and that he sold it to the petitioner for that sum. The committee therefore report a bill for that amount.

DANIEL WALDO & CO.

JANUARY 7, 1859.—Ordered to be printed.

Mr. STANTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Daniel Waldo & Co., respectfully report:

That they have endeavored to give to the subject a very full and careful consideration.

The material facts of the case are briefly as follows: On the 6th of September, A. D. 1850, the petitioner entered into a contract with Major E. A. Ogden, assistant quartermaster, for and on behalf of the United States, for the transportation of 150,000 pounds of army stores from Fort Leavenworth to Santa Fé, at $14\frac{1}{3}$ cents per pound.

The stores were to be sent by the petitioners on or before the 25th of the same month, and to be transported with all practicable despatch and delivered in good condition to the quartermaster at Santa Fé.

On the 9th of September, Major Ogden says, in a letter to Mr. Waldo: "I can give you 500,000 pounds freight, (provisions,) instead of 150,000, but cannot exceed the rate of $14\frac{1}{3}$ cents; whatever is not taken at that price will be kept over until spring."

The means of transportation, that is, the teams, wagons, &c., were to be subject to the approval of the assistant quartermaster at Fort Leavenworth; the freight was to be paid at Fort Leavenworth before the trains started, and the contractors gave bond, with security, to the acceptance of Major Ogden, in the sum of \$50,000, for the faithful performance of the contract on their part.

In the latter part of September the contractors left Fort Leavenworth with 308,180 pounds of freight, in sixty-six large wagons, and eight hundred oxen, divided into two trains, which started within a few days of each other.

In the latter part of November, within the Mexican settlements of La Vega and La Mora, they were overtaken with terrible snow storms and excessive cold weather.

In consequence of the severity of the weather and the scarcity of

provender, a large portion of the oxen died, and the contractors were compelled to buy more teams to complete their undertaking.

The proofs in regard to the amount of the loss are very indefinite, as, indeed, from the nature of the case, they necessarily must be.

But the petitioners state their loss as follows:

"For the loss of 800 head of oxen, at \$25 per head	\$20,000
"The loss of 60 wagons, with chains, yokes, covers, &c., at \$150 each	9,000
"For extraordinary expenses	20,000
	49,000'

This, of course, is mere guessing. But there is no doubt but their losses were very large.

It is not claimed that there is any legal liability on the part of the government to make good these alleged losses.

But it is claimed that, as the losses resulted from causes over which the parties had no control, and which no vigilance or diligence of theirs could foresee or avoid; that, therefore, the government is bound in equity and good conscience to indemnify them. This is a question of very great importance, and cannot be too carefully considered.

The immense amount of military stores required for the supply of our military posts and our armies in the vast unsettled region which lies between the Mississippi river and the Pacific ocean, and the immense expense required for the transportation of the overland mails from California and Oregon cannot fail to give rise to many large claims of this kind in future.

And your committee have no doubt but many claims of a similar character are now ready to be presented, when the favorable action of Congress in this case shall give them reasonable ground to hope for success.

It is admitted that this case cannot be distinguished from the case of Russels, for whose relief a bill was passed by the 33d Congress.

Their trains perished in the same storm, and under precisely similar circumstances.

And the petitioners refer to that case, and rely upon it as a precedent which establishes the liability or obligation of the government to make compensation to them for their losses.

But your committee cannot recognize the action of the former Congress, in a single case, as settling the practice of the government in all similar cases that may thereafter arise.

They therefore propose to treat the question as still an open one, and to examine the principle upon which it rests.

It is not to be denied that the loss of the petitioners resulted from the ordinary fruits of the business in which they were engaged.

All carriers upon this and similar routes between the Mississippi and the Pacific are liable to interruption from deep snows and intense cold in winter, from floods, and roads rendered almost impassable by

mud in spring, and from drought and consequent scarcity of grass and water in summer and autumn.

It cannot be doubted, therefore, that they look to these probable losses in fixing the prices of transportation.

If this contract had been to transport or carry these stores upon a *quantum meruit*, for what they reasonably earned, so that the government might have had the advantage of cheap transportation, if the weather had been favorable, then it would be eminently just and proper for them to pay high rates when it was unfavorable.

But when the government is compelled to pay for transportation at rates enhanced by charges in the nature of insurance against the ordinary fruits of the business, it is not just to require us to pay losses incurred by the perils insured against.

Practically, all effectual competition is excluded in contracts for the transportation of army supplies to distant points in the western territories. The magnitude of the contracts, and the large amount of capital and extensive credit required to enable parties to engage in the business, excludes everybody from the business but large capitalists.

These are never numerous in a new country, and hence those that are engaged in it have a monopoly of it, and are able to command their own prices.

It would be strange, under these circumstances, if they did not require prices that would, under ordinary circumstances, secure profits sufficient to meet the losses of an occasional trip that may prove disastrous.

In this case the price paid was $14\frac{1}{3}$ cents per pound for transporting goods ——— miles, amounting in the aggregate to upwards of \$44,000.

Whether the expenses and losses in this case exceed that sum or not is by no means clear from the proofs.

And certainly the government is not bound to make good the profits which the party would have realized but for the severity of the weather.

It is claimed that the necessities of the service were very great, and that the loss resulted from the extraordinary efforts of the petitioners to hasten their trains and deliver the supplies earlier than they were bound to do by their contract.

It may be that it would not have been a breach of their contract that would have forfeited their bond for them to have delayed their trains for better weather. But it can hardly be seriously claimed that they delivered them sooner than was "practicable."

But one of the principal grounds of complaint is the scarcity of provender, the enormous prices they had to pay for it, and the distance they had to transport it.

It seems to your committee that this evil would have been greatly magnified by stopping the trains in the gorges and cañons of the mountains two or three weeks until the storm abated, to shelter them from the severity of the weather. It would probably have been im-

possible to have [procured provender at any price to save so numerous a train from starvation for so long a time.

Your committee think, therefore, that it was probably the necessities of their position, as well as of the service, which induced the petitioners to press on to Santa Fé with all "practicable despatch," at such a ruinous sacrifice.

Your committee are of opinion that no safe rule can be adopted in the dealings of the government with its citizens, except that which is adopted by its citizens in their dealings with one another. That to adopt any other would expose the government to the grossest imposition and fraud, from proofs that must of necessity be *ex parte*, and consequently partial and one-sided.

Your committee therefore ask to be discharged from the further consideration of the subject.

CHARLES STILLMAN AND BROTHER.

JANUARY 7, 1859.—Ordered, to be printed.

Mr. STANTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Charles Stillman & Brother, report:

That the memorialists claim reimbursement for expenses incurred and damages sustained by them in consequence of the illegal exaction of duties on a cargo of merchandise shipped by them from New York to Brazos St. Jago, in March or April, 1847.

The material facts of the case, as shown by the petition and proofs, are briefly as follows: On the 30th of March, 1847, the petitioners shipped a cargo of goods on board the schooner John Campton, at the city of New York, for Brazos St. Jago, Texas, and the vessel left New York for her destination on the next day. On the 31st of March, 1847, the President of the United States, as commander-in-chief of the army, issued an order requiring the officers of the army in command of all Mexican ports taken by the American army to levy a military contribution in the nature of duties, according to a tariff furnished in the order, upon all goods brought into such ports from the United States.

That the existence of this order was not known to the petitioners at the time the vessel sailed from New York, nor upon the 27th of April following, when she arrived at Brazos St. Jago. Nor had the deputy collector at Brazos St. Jago received any instructions as to the collection of duties, at the time of the arrival of the vessel at that port. But about the time of the arrival of the vessel he was informed of the existence of the order, and forbid the landing of the goods until he should receive instructions, and be able to determine whether they were chargeable with duties.

After they had been detained on board three days, Brigadier General Patterson allowed the goods to be landed and taken to Matamoras, upon the petitioners giving bond in \$10,000 for the payment of any duties which might be legally chargeable upon the goods, which was done.

Upon their arrival at Matamoras duties were demanded, and the sum of \$5,454 60 paid under protest on the 19th day of May, 1847.

The duties so paid were refunded at the Treasury Department on the 5th of October following, on the ground that the order for collecting duties did not take effect until its publication for such time as would enable shippers to know of its existence and contents.

The petitioners claim interest on the amount paid for duties from the time they were paid until they were refunded. Expenses on account of the detention of the vessel and of the goods at Matamoras, pending the controversy about the payment of duties, amounting in the aggregate to \$2,238 80.

In the opinion of the committee, this claim cannot be sustained. There seems to be no reason to doubt but the officers at Matamoras and Brazos St. Jago acted in good faith in the detention of the goods and in the collection of the duties.

JULIUS MARTIN.

[To accompany Bill H. R. No. 770]

JANUARY 7, 1859.

Mr. BUFFINTON, from the Committee on Military Affairs, made the
following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Julius Martin, respectfully submit the following report:

That during the year 1847, at which time the United States was engaged in a war with Mexico, the memorialist was a resident of California; that upon an order of Colonel J. C. Frémont, commanding a battalion of United States troops, he, the memorialist, furnished to said troops ten horses, valued at twenty-five dollars each; two hundred feet of lumber, worth eight dollars; one chest of carpenters' tools, worth one hundred and fifty dollars; and two sets of mule harness, worth twenty dollars—amounting in the aggregate to four hundred and twenty-eight dollars. That in consideration of the memorialist having furnished certificates from Quartermaster Jacob R. Snyder and Major P. B. Readings, who served at that time under the command of Colonel Frémont, which also bear his approval, the committee are of opinion that the memorialist should have relief, and they therefore report the accompanying bill.

THE
REPORT
OF THE
COMMISSIONER
OF THE
LAND OFFICE
FOR THE
YEAR
1885

1885

REPORT
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ANNE E. BRONAUGH.

[To accompany Bill H. R. No. 771.]

JANUARY 7, 1859.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Anne E. Bronaugh, widow of the late John W. Bronaugh, respectfully report:

That it appears a suit was ordered on the 19th of April, 1827, against the said John W. Bronaugh, for a balance due from him as a contractor for the delivery of timber. The amount was stated to be \$4,345 12, which amount, with interest from the 6th day of July, 1808, was recovered against him in the eastern district of Virginia.

It further appears that \$8,364 11 has been paid on this judgment—\$4,018 99 more than the original debt. The interest, however, accumulated on the unpaid balances, amounts to about \$18,000, chargeable against the estate of the said John W. Bronaugh.

The memorialist prays that the amount of money paid in interest over the principal be reimbursed to her, and that the balance lying charged against her late husband, and daily increasing, be cancelled, and the judgment entered as satisfied.

The committee cannot see any merit in the claim for the reimbursement of the amount paid over and above the principal, but looking to the fact that Mrs. Bronaugh's own property was spent by her husband, and that her means were used to satisfy the amount already paid on this judgment, the committee have concluded to recommend that the balance of the interest be released, and the judgment be entered as satisfied.

As it now stands, her property and that of her husband's is all exhausted, and the judgment is perfectly worthless.

The committee therefore report the accompanying bill.

REPORT
OF THE

COMMISSIONER

OF THE LAND OFFICE, IN RESPONSE TO A RESOLUTION PASSED BY THE HOUSE OF REPRESENTATIVES, APRIL 18, 1870.

REPORT

OF THE COMMISSIONER OF THE LAND OFFICE, IN RESPONSE TO A RESOLUTION PASSED BY THE HOUSE OF REPRESENTATIVES, APRIL 18, 1870.

That it appears from the report of the Commissioner of the Land Office, in response to a resolution passed by the House of Representatives, April 18, 1870, that the same has been forwarded to the proper authorities for their consideration.

The Commissioner of the Land Office has the honor to acknowledge the receipt of the report of the Commissioner of the Land Office, in response to a resolution passed by the House of Representatives, April 18, 1870, and to state that the same has been forwarded to the proper authorities for their consideration.

As it now stands, the report of the Commissioner of the Land Office, in response to a resolution passed by the House of Representatives, April 18, 1870, is hereby recommended to the House of Representatives for their consideration.

ANTONE ROBIDOUX.

[To accompany Bill H. R. No. 772.]

JANUARY 7, 1859.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Antone Robidoux, a citizen of the Territory of New Mexico, respectfully report:

That the said Robidoux was employed by General Kearney, in 1846, to proceed with his command as an interpreter; that he attached him to his staff, and promised to send to Washington and obtain a commission for him, which, if ever sent for, was never received by the memorialist. The said Robidoux marched with the army to Santa Fé, in New Mexico, and thence to California, where, at a place called San Pascual, on the 6th of December, 1846, a battle ensued with the Mexicans, in which the said Robidoux was wounded with a lance in the spine, which produced blindness, under which unfortunate affliction he is now suffering. Being, on account of this wound, unable to return with the army from California, he was discharged there, without any allowance to pay his travelling expenses home. On account of his disability, he was obliged to remain in California some three months before he could get a passage home, being unable to travel by land. Finally, by a slow and tedious journey, via Peru, Jamaica, and other places, he was enabled to reach New Orleans.

It is for a remuneration by Congress of his travelling expenses that the memorialist now petitions Congress.

The committee, looking at the great affliction he has suffered in behalf of his country, and at the fact that he was doing duty as a staff officer at the time of his wound, think that he is entitled at the hands of the government to his travelling expenses, and they therefore report the accompanying bill.

JOHN ALLEN.

[To accompany Bill H. R. No. 773.]

JANUARY 7, 1859.

Mr. JOHN SHERMAN, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of John Allen, of Brooklin, Maine, have had the same under consideration, and report :

During the last war with Great Britain, on the 20th of May, 1814, the petitioner, being then master of the schooner "William and John," with three hands and one passenger, was bound from Machias, Maine, to Boston, with a load of lumber. During the voyage the schooner was discovered by his Britannic Majesty's schooner "Bream," which gave chase and sent a twelve-oared barge, commanded by a midshipman and six men, in shore after him. Captain Allen, the petitioner, gave battle and succeeded in killing two of the crew, wounding two others, and capturing the crew and barge, without the loss of a single one of his own party. His brilliant exploit was extensively noticed by the public press of the country, and a number of citizens of Boston presented him with an elegant sword, containing suitable inscriptions, and which he still has in his possession.

The commander of the enemy's schooner sent in to him a flag of truce, and made a proposition to exchange a chebacco boat and two citizens of Goldsboro' for "his Britannic Majesty's boat's crew." This Captain Allen refused to do. At four different times afterward flags of truce were sent in, and the following terms finally agreed on: That in consideration of Captain Allen's giving up the British prisoners on parole, the commander of the "Bream" was to give Captain Allen \$90 in cash, return the two American prisoners belonging to Goldsboro', give up a chebacco boat, with property on board of her valued at \$700, and Captain Allen to retain the twelve-oared barge, with all her armament, consisting of one swivel, six muskets, five cutlasses, six cartridge-boxes, one spy-glass, some blue lights, a compass, one trumpet, and a quantity of canister and grape shot, all of which were valued at \$300.

For this exploit, he now, in his old age, asks a pension. None of those engaged with him in his brave exploit are now alive. He is a very poor and very worthy man, and his call upon Congress for a pension your committee think just and proper; they have, therefore, reported a bill for his relief, and do recommend its passage.

FRANCIS JACOBS—WIDOW OF.

[To accompany Bill S. 298.]

JANUARY 7, 1859.

Mr. HICKMAN, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, concurring in the report of the Senate's committee, adopt it as their own, and instruct me to report back to the House the Senate Bill No. 298, and ask its adoption.

IN THE SENATE OF THE UNITED STATES, *April* 28, 1858.

Mr. THOMSON, of New Jersey, made the following report:

The Committee on Pensions, to whom was referred the petition of Catharine Jacobs, have had the same under consideration, and beg leave to report:

That the husband of the petitioner, though acting in the capacity of a *waiter*, seems to have been regarded by General Washington as a very deserving man, and on one occasion was relied upon as a guide and *spy*, which duty is the most dangerous that a *soldier* has to encounter, and on which occasion he received a wound, for which he was pensioned by Congress; and though they feel much hesitancy as to the propriety of establishing the precedent of pensioning those not strictly in the "military" service, yet they are disposed to regard this as an extraordinary case, and willing that the associations which the name of Washington awaken should have an influence, and therefore recommend that the prayer of the petitioner be granted.

The facts connected with the case are set forth in the annexed letter (marked A) from the Commissioner of Pensions, dated January 11, 1858, and addressed to J. J. Coombs, esq.

Adopting this letter as a part of their report, they herewith present a bill.

A.

PENSION OFFICE, *January 11, 1858.*

SIR: The claim of Mrs. Catharine Jacobs, for a pension under the 2d section of the act of February 3, 1853, as the widow of Francis, has been examined and rejected.

Francis Jacobs, the husband of the claimant, served in the capacity of a servant or waiter to General Washington for several years during the war of the revolution, and was wounded while acting as a guide or pioneer to him and his staff the night before the battle of Brandywine, in crossing fields and woodlands to reach a point where an alarm had been given that the British were making a movement which indicated a purpose to cross the Brandywine.

He applied for a pension under act of June 7, 1832, but was denied, for the reason that the act did not embrace persons who served in the capacity of servants or waiters. Congress, by special act, dated June 30, 1834, allowed him a pension of eight dollars a month, commencing January 1, 1832, to continue during the period of his natural life. He died December 27, 1844, leaving the claimant, to whom he was married subsequent to 1800, his widow. She now asks to be pensioned under the act of February 3, 1853, at the same rate of pension her husband received under the special act of June 30, 1834. There is no law of Congress by which the pension allowed to a person who served in any capacity in the war of the revolution under a special act can be granted to the widow of such person; and as service as a waiter or servant is not recognized by any provision of the general pension laws, I am unable to grant the allowance to Mrs. Jacobs she desires. Her husband was a very meritorious person, or else General Washington would not have employed him as his waiter or servant during the arduous struggles of independence, and continued him in that capacity under his administration as President; but however much merit was attached to his character, and however important at times his assistance may have been, Congress has not made any provision by its general enactments which would embrace his case. My duty is to execute the law. The only relief I can see for Mrs. Jacobs is in an application to Congress.

Very respectfully,

GEORGE C. WHITING,
Commissioner.

J. J. COOMBS, Esq., *Present.*

JOHN STROOP—WIDOW OF.

[To accompany Bill S. 142.]

JANUARY 7, 1859.

Mr. HICKMAN, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, concurring in the report of the Senate's committee, adopt it as their own, and instruct me to report back to the House the Senate bill No. 142, and ask its adoption.

The Committee on Revolutionary Pensions, to whom was referred the petition of Hannah Stroop, widow of John Stroop, deceased, a revolutionary pensioner, ask leave to report:

Hannah Stroop is an applicant for a pension under the act of 1853, but was unable to obtain it from the Commissioner of Pensions, because the papers and vouchers upon which her husband had been placed upon the pension roll had been destroyed by fire in the War Office in 1814, and she was entirely unable to prove the service of her husband in the army, as all his comrades were probably dead or unknown to her.

The fact of her being the widow of John Stroop is fully proved, and also that her husband's name was on the pension roll, and that he received his pension until the time of his death; and it is also in proof that the evidence upon which the pension had been granted was destroyed by fire in 1814.

Under the above circumstances, the committee ask leave to report a bill.

JOHN NEAL, DECEASED.

JANUARY 7, 1859.—Ordered to be printed.

Mr. PARKER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of A. G. Neal, praying for the arrears of pension for the services of John Neal, deceased, beg leave to report:

That a similar application has been made upon the same papers to the Commissioner of Pensions, which was examined by three successive Commissioners of Pensions, and upon appeal by the Secretary of the Interior, and by all of them rejected. Your committee are unwilling to recommend a reversal of the decisions of the department to which the subject of pensions is by law referred, unless very special reasons exist for such reversal, and which they do not find existing in this case. They therefore see no reason for granting the relief prayed for, and ask to be discharged from the further consideration of the petition.

JOHN DEAN TESTARD

Witness, Testimony, &c.

At the Court of the Commissioners of the Land Office, in the City of New York, on the 10th day of January, 1878.

REPORT

The Commission on the Land Office, created by Act of Congress, approved March 3, 1877, Chapter 10, Section 1, has the honor to report to the House of Representatives, in accordance with the provisions of the Act, the results of its investigation.

That a similar application has been made upon the same papers to the Commission on the Land Office, which was assigned by the same Act to the Commission on the Land Office, and upon appeal by the Secretary of the Interior, and by all of them rejected. Your committee are not willing to recommend a reversal of the decision of the department as to the subject of pensions to be lawfully received, unless very special reasons exist for such reversal, and which they do not find existing in this case. They therefore see no reason for granting the relief requested, and ask to be discharged from the further consideration of the petition.

EMMA DELANEY.

JANUARY 7, 1859.—Ordered to be printed.

Mr. PARKER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Emma Delaney, praying for a pension for services of her father, Gilbert Dean, in the revolutionary war, beg leave to report:

That Gilbert Dean, the father of the petitioner, died in the year 1825, prior to the existence of any law under which he could claim a pension. The committee therefore see no reason why the petitioner can claim to be entitled to a pension. They therefore ask to be discharged from the further consideration of the petition.

WYMA DELAWARE

January 7, 1919—Conference held.

Mr. PARKER, from the Committee on Heterothelous Pensions, reports
the following

REPORT.

The Committee on Heterothelous Pensions, to which was referred the
petition of *Wyma Delaware*, praying for a pension for services in the
War of 1812, in the following report, beg leave to report.

That *Wyma Delaware*, the father of the petitioner, died in the year
1812, prior to the existence of any law under which he could claim
a pension. The committee therefore has no reason why the petitioner
can claim to be entitled to a pension. They therefore ask to be dis-
charged from the further consideration of the petition.

PHINEAS EMMONS.

JANUARY 7, 1859.—Ordered to be printed.

Mr. BRAYTON, from the Committee on Patents, made the following

REPORT.

The Committee on Patents, to whom was referred the petition of Phineas Emmons and others, heirs of Uri Emmons, for leave to apply to the Commissioner of Patents for the extension of the patent of Uri Emmons for his improvement in planing machinery, which is identical with a petition presented to the last Congress, report:

That after due consideration of the proof and papers in the case, they are of the opinion that the prayer thereof should not be granted, and beg leave to submit the report of the Committee of Patents of the last Congress as their report, as follows:

Uri Emmons, in April, 1829, took out his patent for a planing machine. His executor, Calvin Emmons, applied, in 1843, to have the said patent extended, which application was denied by the then board of commissioners, on the 25th April, 1843, Mr. Commissioner Ellsworth, a member of the board, dissenting. The opinion of the board on the case is comprehensive, and partly in these words: "Upon hearing of the evidence for and against the extension, it is considered by the said board that it does not appear to their satisfaction, having a due regard to the public interest therein, that it is just and proper that the term of the said patent shall be extended."

On the 20th February, 1844, an application for renewal of said patent then being before Congress, the two members of the board above referred to gave a certificate, in which they state, "it is but just to say that the decision then made" (to wit, in 1843) "ought not to be taken as evidence against the application of Mr. C. Emmons to Congress, if it can be established that the three particulars in which the Emmons machine differs from the Woodworth machine are the invention of Emmons, and that they are of public utility, and that he was the original inventor." To understand more fully the circumstances in the case, it is necessary to state that William Woodworth took out a patent for a planing machine in December, 1828, a few months prior to the date of Emmons' patent; and that these rival claimants to the right of invention agreed to blend their two patents, thus making a more complete machine, as well as avoiding expensive litigation in the attempt to establish an exclusive right. They divided the country between them, wherein each had his respective right to dispose of the machine, and agreed that all improvements made therein, and all renewals and extensions of patents, should enure to

the benefit of both, and, in pursuance of the agreement, machines were licensed in various parts of the country. The Woodworth patent was extended by the board of commissioners, whilst the extension of the Emmons patent was denied. Mr. Commissioner Ellsworth, in his dissenting opinion in behalf of Emmons, goes fully into the merits of both these patents, and appears to favor the extension of the Emmons patent mainly on the ground that as these two had, by consent of parties, been blended, and thus put in public use, a denial of extension of the patent to Emmons would operate injuriously, by allowing Woodworth to harass those who had purchased or had been licensed to use the blended patents. It is true he does not deny merit to either, and rather gives the greater credit to Emmons; but he places their merit not on the ground of their being original inventors, but, to use his language, "for the introduction of the machine, and for some arrangements for gearing and other minor matters."

In speaking of the merit of invention or originality in these parties, Mr. Ellsworth says: "In examining this subject, it must be distinctly remembered that neither Mr. Woodworth nor Mr. Emmons have *very* great or extraordinary merit, because as far back as 1793 a patent was granted; and in the Repertory of Arts the great principles so pre-eminently useful in this planing machine, with the rotary cutters and grooving and moulding, are described with such clearness and perspicuity that every good machinist can erect a machine combining most of the advantages of either Emmons or Woodworth's patents, and yet both may be entitled to patents for being the first combiners of principles to carry out specifically the plan described in the book." He further says, that the testimony of witnesses then before him showed "unequivocally that, with the Repertory of Arts before them, a machine could easily be constructed like and equal to the present machines now in use in this country." And, further, he says: "To these depositions, or to the argument, I add, as my own opinion, that, with said book for an only guide, a planing machine, embracing all the most essential advantages of Woodworth's and Emmons' patents, could be built." And again he says: "Thus, then, for the great benefit of the machine the public are not indebted to either Emmons or Woodworth. So as to the grooving," &c.

In the opinion of your committee, there is nothing appearing in the case sufficient to vary this decision of the Commissioner. They find no new evidence, such as induces them to believe that a further reference of this matter to the Commissioner of Patents would result in the granting to the petitioners an extension of letters patent. A favorable report was made by the committee to the Senate, in 1854, for the renewal of Emmons' patent during the term and until Woodworth's patent should expire; thus carrying out Mr. Commissioner Ellsworth's idea that as one of these patents had been extended the other should also be extended. That reason, however, for the extension or renewal of Emmons' patent does not now exist, since Woodworth's patent has terminated. In view of all the facts and circumstances of the case, your committee recommend that the prayer of the petitioners be not granted, and they ask to be discharged from the further consideration of the subject.

ELI HART.

JANUARY 13, 1859.—Laid upon the table and ordered to be printed.

Mr. MAYNARD, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Eli Hart, asking indemnity for losses on the Niagara frontier, have had the same under consideration, and beg leave to report :

The petitioner states that previous to and during the war between the United States and Great Britain he was a merchant in the village of Buffalo, State of New York ; that, at an early period of the war, it became necessary for its preservation to place public property in buildings of individuals, as the United States had no public buildings in that section of the country. Petitioner, at the request of officers, received at sundry times public property for storeage, and three of his buildings contained the property, or were in the occupation, of the United States on the 30th December, 1813, when the village of Buffalo was burned by the British. Petitioner claims \$8,500 for his buildings destroyed and \$8,902 39 for his stock of goods destroyed at the same time.

This claim was presented to the executive department of the government for payment, under the act of April 9, 1816, providing for property captured or destroyed while in the military occupation of the United States, but was rejected, as not falling within the provisions of that act. But afterwards, by a special act of Congress in 1826, Mr. Hart was paid for his buildings the sum of \$6,118 50, and he now claims the balance of \$11,363 89. The case was first presented to Congress in 1819, when an adverse report was made from this committee. Similar reports were made on the same case in 1820, 1821, 1822, and 1824. On the 3d day of March, 1825, Congress passed an act to amend the act of 1816, and authorized the payment for houses destroyed by the enemy when shown to have been in the occupancy of the United States. Under this act the claim of Mr. Hart was re-examined by the Third Auditor and allowed for the sum stated, viz : \$6,118 50. This, in the opinion of your committee, disposes of the claim for buildings.

The claim for merchandise destroyed is one of a large class of claims which have been uniformly rejected by Congress, and very properly so, for there is no principle of equity of justice which should render the government liable for store goods which the owners may move at plea-

sure and risk in the buildings at their own option. The whole Niagara frontier was destroyed, including property not in the occupancy of the government as well as that which was. The payment for the buildings was, in the opinion of your committee, improperly made, as their destruction was not the result of their temporary occupation by the government but the fate common to the whole frontier, resulting from an invasion by the enemy. Major General Hall, in his testimony, says:

“I am satisfied that one principal cause of said village (Buffalo) being burnt was in consequence of its being a military deposit, and occupied as barracks by troops in the service of the United States.”

By this testimony it appears that the whole village, and not any particular house or dwelling suffered from the military occupation by the troops of the United States. Indeed, Mr. Hart shows that there was an effort on the part of the enemy to prevent the destruction. John Lay, jr., swears that “he was taken prisoner by the enemy, and while in their hands heard several British officers say that an order had been issued for the saving of Cyrinious Chapin’s house from burning, and consequently the store of Eli Hart, which was adjoining, would not be hurt, as the firing of said store would inevitably cause the destruction of the buildings of Chapin.” To prevent the destruction of these buildings a guard was placed in front of Hart’s store, and yet, as his buildings were destroyed after all these precautions, he claims, and has actually received pay for the same, because he happened to have in store goods belonging to the United States, while others whose property was destroyed at the same time do not pretend to have a claim upon the government.

Your committee perceive no grounds whatever upon which the claim for merchandise destroyed can be justified, and they, therefore, report back the case, with a recommendation that the prayer of the petitioner be not granted.

ELI HART.

JANUARY 13, 1859.—Laid upon the table and ordered to be printed.

Mr. MAYNARD, from the Committee of Claims made the following

REPORT.

The Committee of Claims, to whom was referred the "petition of Eli Hart, for interest and discount on money loaned Quartermaster's Department," have had the same under consideration, and beg leave to report :

That this claim was presented to Congress first in 1820, when the Committee of Claims reported adversely, pronouncing the loan a voluntary one. They say :

"That the petitioner states he loaned to John G. Camp, Deputy Quartermaster General, in the months of October and November, 1814, the sum of \$16,000 for the use of the United States, and to enable the said John G. Camp, (who was then destitute of funds,) to procure forage for the use of the army of the United States: That he did so on assurance given him by said Camp that the money should be returned to him in thirty days, which, however, the said Camp failed to do; that he received no part thereof until the first of January, 1815, and at that time, only \$3,000; that on the first of March following, he received \$8,000, and that on the 14th April, 1815, he received the balance of \$5,000. That the two latter payments were in Treasury notes, which, at the time he received them, were depreciated in value, whereby he sustained considerable damage, to the amount (as he alleges) of \$1,205 13, including interest, which sum he asks to be paid him by the United States.

"John G. Camp, Deputy Quartermaster General, testifies that he received the \$16,000 from the petitioner for the purposes stated, and as to the repayment as stated above, admitting the statements made by the petitioner and witnesses to be correct, yet the committee cannot admit the petitioner has any just claim on the government. The act was voluntary on his part, and he must have known that the Deputy Quartermaster General had no authority to borrow money on behalf of the United States. They are of the opinion that it would be injudicious and inexpedient to grant the claim of the petitioner, and recommend that the petition be rejected."

In 1821 this case was presented again to Congress, but without action; but in 1822 the Committee of Claims made another adverse report, showing that Deputy Quartermaster General Camp had public

funds in his possession at the time this loan was negotiated. They also say that "the money was not applied to the public service, but must have been used to promote the schemes of private and individual speculation." It was moreover shown that no application was ever made to the War Department for a settlement of the claim. The following letter from the Secretary of War is conclusive on this point:

DEPARTMENT OF WAR,
February 7, 1822.

SIR: I have received your letter of the 4th instant, referring to the petition of Eli Hart, and requesting me to inform the Committee of Claims the time at which the petitioner first made application at this department for the relief he now asks of Congress. In answer I have the honor to state that, upon a careful examination, I do not find any record of his ever having made application for the relief he now asks.

I have the honor to be your obedient servant,

J. C. CALHOUN.

Hon. L. WILLIAMS,

Chairman of the Committee of Claims.

The report of the committee in 1822 seems to have satisfied the claimant, and settled the case for upwards of a quarter of a century; for it was not again heard of from that date till 1858, when it was again presented to Congress and referred to your committee. If it were a new case, and brought to the attention of Congress for the first time, your committee would not hesitate to say its allowance would be in violation of justice and public policy, as it would be a recognition of the power of a subordinate officer of the government to negotiate and obtain loans on public account, without any authority of law. They therefore fully concur in the previous reports made in this case, and again report it back to the House with the recommendation that the prayer of the petitioner be not granted.

J. H. WAGGAMAN.

JANUARY 13, 1859.—Laid on the table, and ordered to be printed.

Mr. MAYNARD, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the report of the Court of Claims, No. 171, in the case of J. H. Waggaman, have had the same under consideration, and beg leave to report :

That claimant was a clerk in the office of the Commissioner of the General Land Office, at a salary of \$1,200. On the 13th of January, 1845, the Commissioner addressed the following note to him :

“ GENERAL LAND OFFICE, *January 13, 1845.*

“ SIR: One hundred dollars have been added to your salary, to take effect from this date.

“ THOS. H. BLAKE, *Commissioner.*”

This notification never having been withdrawn or abrogated, Mr. Waggaman claims the additional one hundred dollars from the date of the note to July 1, 1853, when the office was reorganized. The law allowed to the Commissioner of the General Land Office sixteen clerks, at a salary of \$1,300 per annum, and the records show that there were sixteen clerks drawing that salary during the period named, exclusive of Mr. Waggaman; and as the Commissioner had no power to increase the number, your committee can perceive no justice in the claim set up by Mr. Waggaman; and referring the House to the adverse report of the Court of Claims, hereto annexed, your committee report back the case, and recommend that the report of the Court of Claims be concurred in.

J. H. WAGGAMAN.

MAY 4, 1858.—Reported from the Court of Claims, and committed to a Committee of the Whole House to-morrow.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

J. H. WAGGAMAN *vs.* THE UNITED STATES.

1. The petition of the claimant and amendment.
2. Account showing the amount claimed.
3. Report of the Commissioner of the Land Office to the Secretary of the Interior, with documents therein referred to, and the reply of the Commissioner of the Land Office to the order of the Court of Claims, with copies of letters relating to the claim, transmitted to the House of Representatives.
4. United States Solicitor's brief.
5. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this third day of May, A. [L. s.] D. 1858.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

UNITED STATES COURT OF CLAIMS.

JOHN H. WAGGAMAN *vs.* THE UNITED STATES.

PETITION.

To the honorable the United States Court of Claims:

The petition of John H. Waggaman, late a clerk in the General Land Office, respectfully shows: That, prior to the 13th of January, 1845, and to that day, he was a clerk in the General Land Office,

under an appointment of the Commissioner thereof, at a salary of \$1,200; that on the day above designated he was promoted to a clerkship, at a salary of \$1,300, by a formal official notice from the Commissioner that one hundred dollars had been added to his salary, to take effect from that date. Said notice of that promotion was in the form and words following, viz:

GENERAL LAND OFFICE, *January 13, 1845.*

SIR: One hundred dollars have been added to your salary, to take effect from this date.

THO. H. BLAKE,
Commissioner.

Mr. JOHN H. WAGGAMAN,
General Land Office.

Your petitioner also states that this notice, or letter of promotion, so given and received, was made a matter of record, and was never withdrawn or abrogated till the General Land Office was reorganized the 1st of July, 1853, under the act of 3d March, same year, and he received a new appointment; that, notwithstanding this formal and unequivocal promotion, the department continued to pay the petitioner thereafter, just as he had been paid before, at the rate of \$1,200 per annum only, which he received and receipted for as usual for so much only, without intending thereby to relinquish or in any degree to impair his right to the one hundred dollars per annum which had been added to his salary of \$1,200, as aforesaid.

And further, your petitioner states that, having presented his account for the arrears of pay due to him from the 13th of January, 1845, to the 1st of July, 1853, a term of 8 years and 5 months and 13 days, amounting to the sum of \$845 03, and payment of the same having been refused, he is constrained to seek relief at the hands of this honorable Court.

And furthermore, the petitioner states that his claim is founded upon the 10th section of the act of Congress approved the 4th day of July, 1836, "to reorganize the General Land Office," (*see Statutes at Large, L. & B., vol. 5, p. 112,*) whereby the Commissioner was authorized to appoint clerks in his office, of certain grades of salaries, and among them sixteen clerks, at salaries of \$1,300 each; and the records of his department show that, in 1844, and to the 13th day of January, 1845, that class of clerks, as to the number he was authorized to appoint, was incomplete; and consequently, when he promoted your petitioner from a clerkship of twelve to one of thirteen hundred dollars, he had ample power so to do.

And now, in conclusion, justice having been denied him, as aforesaid, the petitioner respectfully prays the honorable Court of Claims for a decision in his favor for the amount claimed by him.

J. F. POLK,
Counsel for Claimant.

UNITED STATES COURT OF CLAIMS.

JOHN H. WAGGAMAN *vs.* THE UNITED STATES.*Brief.*

This is a claim for arrears of compensation due for services rendered as a clerk in the General Land Office. It seems that the claimant was promoted, as set forth in his petition, but never received the amount he was officially informed had been added to his salary; and for this it is he brings this action.

The Commissioner of the General Land Office, by letters filed in this case, admits that the claimant was a clerk in that office, at a salary of \$1,200 prior to the 13th of January, 1845, and that on that day he was officially notified that one hundred dollars had been added to his salary, to take effect from that date; and the 10th section of the act of Congress of the 4th of July, 1836, "to reorganize the General Land Office," (Statutes at Large, vol. 5, p. 112,) invested the Commissioner with power to appoint sixteen clerks, at salaries of \$1,300 each.

When the claimant was notified that an addition of one hundred dollars had been made to his salary, then \$1,200, the number of clerks in the General Land Office, at salaries of \$1,300 each, was short of sixteen. Hence, the Commissioner was at liberty to make up the number, if he saw fit, by appointment or promotion.

Now, the legal points, &c., relied on to maintain this case are:

1. That the promotion of a clerk in any department of the general government is tantamount to an appointment.

2. That an official letter from an officer vested by law with appointing power, informing a clerk in his office that a certain sum has been added to his salary, to take effect from a certain day, and which sum increases his salary to an equality with others of a grade or class within the appointing power of such officer, and where such class, in respect to the number authorized by law, was not previous thereto complete, *is a promotion*, and equivalent to an appointment.

3. That an official letter of promotion or appointment cannot be withdrawn or abrogated unless the person promoted or appointed thereby is officially notified thereof.

4. That a notification of the withdrawal or abrogation of a letter of appointment or promotion is not official, unless it be in writing and signed by the officer having lawful authority to make such abrogation, &c.

5. That the receipts of a clerk, who has been promoted, for payments made to him at the rate of his former salary, and his acceptance of such sums, do not constitute a bar to his claim to the additional amount to which his promotion entitled him, without an express agreement to that effect.

But payment of Mr. Waggaman's claim is refused at the department on the ground that the notification he received, that one hundred dollars had been added to his salary, "appears not to have been carried

into effect, but withdrawn, as the record of his salary account shows that he was set down at only \$1,200 to July, 1853, which was accepted and regularly receipted for by him as in full."

Now, that the notification aforesaid was not carried into effect is the very reason why the claimant makes his complaint; and as to the record of his salary account, it is manifestly a false record, for immediately on his promotion it should have been changed to \$1,300, in lieu of \$1,200; and his accepting the latter sum, and receipting for the same as formerly, was only in full for so much. And he feels assured that this honorable Court will not permit the department to take advantage of its own wrong to the prejudice of his rights.

These points and facts are respectfully submitted for the consideration and decision of the honorable the Court of Claims.

J. F. POLK,
Counsel for Claimant.

JOHN H. WAGGAMAN *vs.* THE UNITED STATES.

To the United States Court of Claims:

The petitioner having been permitted by the Court to amend his petition, and allowed a rehearing of his cause, further respectfully states that—

The fear of losing his office prevented him from urging his claim as importunately as otherwise he would have done; but that he did assert it from time to time with as much vigor and perseverance as prudence, in his judgment, would justify, was well known in the department, both to the Commissioner and his clerks.

That he brought the case directly to the notice of General Shields, Colonel Blake's successor in office, and asked him if, to deprive the petitioner of his right to the amount of his claim, which was based on a matter of record in his office, it were not necessary that it should be cancelled by an official communication addressed to him in writing; to which no reply was ever made to the petitioner either orally or in writing.

That afterwards the petitioner called the attention of the chief clerk, John Wilson, esq., to the claim, and he, likewise, forbore to express an opinion, or to give any advice touching the question.

That he brought it to the notice, also, of Commissioner Butterfield, and told him, in express terms, that "if the government could be sued he would ask no favors, but would make it pay him;" that Mr. Butterfield also treated his demand with silence and neglect.

That fearing, as stated above, that if he pushed his claim any further he might give offence, and would consequently be removed from office, and hoping that in the course of events there might be an accession to the department of a head disposed to do him justice, he, contrary to the advice of many of his fellow-clerks, who were cognizant of the whole matter, said no more about it, and waited for the

arrival of that hoped-for more auspicious season, which seemed, indeed, to be realized in the organization of this honorable Court.

The petitioner further states, in reference to the signing, after his promotion, of those receipts for monthly payments at the rate of \$1,200 per annum, the amount of his salary previous to his promotion the 13th of January, 1845, and which affirm to be in full of all that was due to him, that they consisted of common receipt rolls for all the clerks in the office to sign. That his salary being absolutely necessary for the support of his family, he was actually constrained by necessity to sign any receipt and to accept whatever sum of money was on each occasion tendered him, believing, however, at the same time, that a receipt was but *prima facie* evidence of payment, and that the payment of a sum designated is not, of itself, a positive discharge of a debt for a larger amount, although the terms of the receipt be in full; and he further declares that it was far from his intention, by the constrained signing of those receipts, to relinquish his right to the additional sum allowed him by Mr. Commissioner Blake, as aforesaid.

And he will pray, &c.

THE UNITED STATES

To JOHN H. WAGGAMAN, DR.

To increase of salary, under letter of Commissioner of the General Land Office, dated January 13, 1845, at the rate of one hundred dollars per annum, for services rendered, from January 13, 1845, to July 1, 1853, being eight years, five months, thirteen days, at one hundred dollars per annum, amounts to..... \$845 03

WASHINGTON CITY, D. C., *April 5*, 1856.

GENERAL LAND OFFICE, *January 19*, 1858.

SIR: I have the honor to return herewith the letter from Mr. S. H. Huntington, chief clerk of the Court of Claims, covering an order of said Court calling for certain information respecting the service of John H. Waggaman, formerly a clerk in this office, and, in reply, to state—

1st. Mr. Waggaman was appointed a clerk in this office on 3d April, 1841, at \$1,200 per annum, and continued as such until 1st July, 1853, the date of the reorganization, when he was continued as a clerk of the first class, at \$900 per annum, which position he filled until his removal, in August, 1854. During his incumbency, Mr. Waggaman was engaged as book-keeper, but may have performed some duties as accountant.

2d. Similar duties were performed by others in this office, some of whom received \$1,200 and some \$1,300 per annum.

3d. A change of duties of a clerk in this office did not, at that time, necessarily follow his promotion, nor does it now, as there are, at this time, clerks performing similar duties whose salaries are not the same.

In this connexion, I also enclose copies of letters dated March 31 April 21, and June 12, 1856, to J. F. Polk, esq., attorney for Mr. Waggaman, and in reply to inquiries on this subject.

With great respect, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. JACOB THOMPSON,
Secretary of the Interior.

A.

GENERAL LAND OFFICE,
January 13, 1845.

SIR: One hundred dollars have been added to your salary, to take effect from this date.

Very respectfully,

THOS. H. BLAKE,
Commissioner.

Mr. J. H. WAGGAMAN.

B.

GENERAL LAND OFFICE,

January 31, 1845.

We, whose names are hereunto subscribed, acknowledge to have received from R. H. Williamson, pay agent, the sums opposite our respective names, in full payment of our salaries in said office for the month ending on the 31st day of January, 1845.

Names.	Amount received.	Signatures.
Thomas H. Blake, Commissioner.....	\$250 00	Thos. H. Blake.....
Reuben M. Whitney, Recorder.....	166 00	R. M. Whitney.....
John M. Moore, principal clerk.....	150 00	John M. Moore.....
Joseph S. Wilson.....do.....	150 00	Jos. S. Wilson.....
John Wilson.....do.....	150 00	John Wilson.....
Charles S. Frailey, clerk.....	125 00	Chas. S. Frailey.....
William T. Steiger, principal draughtsman.....	125 00	Wm. T. Steiger.....
William Simmons.....clerk.....	116 00	Wm. Simmons.....
M. Fitzhugh.....do.....	116 00	M. Fitzhugh.....
N. A. Randall.....do.....	116 00	N. A. Randall.....
George W. Cambloss.....do.....	116 00	Geo. W. Cambloss.....
William Wood.....do.....	108 00	William Wood.....
Benjamin T. Reilly.....do.....	108 00	Benj. T. Reilly.....
Edmund Coolidge.....do.....	108 00	E. Coolidge.....
Edward Barnard.....do.....	108 00	Edward Barnard.....
John Y. Bryant.....do.....	108 00	John Y. Bryant.....
William O. Slade.....do.....	108 00	Wm. O. Slade.....
David T. Heaton.....do.....	108 00	D. T. Heaton.....
Benjamin Evens.....do.....	108 00	Benjamin Evens.....
Isaac C. Smith.....do.....	108 00	Isaac C. Smith.....
Orris S. Paine.....do.....	108 00	O. S. Paine.....
R. H. Williamson.....do.....	108 00	R. H. Williamson.....
George C. Whiting.....do.....	108 00	Geo C. Whiting.....
William W. King.....do.....	108 00	Wm. W. King.....
Edward A. Cabell.....do.....	108 00	E. A. Cabell.....
James H. Blake.....do.....	108 00	Jas. H. Blake.....
F. W. Thomas.....do.....	108 00	F. W. Thomas.....
Walter T. Brooke.....do.....	100 00	W. T. Brooke.....
Ephraim Gilman, as draughtsman.....	100 00	E. Gilman.....
Charles Fletcher.....clerk.....	100 00	Charles Fletcher.....
Lewis G. Gassaway.....do.....	100 00	Lewis G. Gassaway.....
William Henry.....do.....	100 00	W. Henry.....
Henry Hungerford.....do.....	100 00	H. Hungerford.....
Moses Kelly.....do.....	100 00	M. Kelly.....
George W. Wilson, deceased, from the 1st to the 9th, inclusive.....	30 00	
Parker H. Sweet.....clerk.....	100 00	P. H. Sweet.....
William H. Deitz.....do.....	100 00	Wm. H. Deitz.....
John L. Barnhill.....do.....	100 00	J. L. Barnhill.....
John H. Waggaman.....do.....	100 00	John H. Waggaman.....
William Nourse.....do.....	100 00	William Nourse.....
Albert Greenleaf.....do.....	100 00	A. Greenleaf.....
Charles A. Davis.....do.....	100 00	C. A. Davis.....
James P. Randolph.....do.....	100 00	James J. Randolph.....
John P. Wingerd.....do.....	100 00	John P. Wingerd.....
John W. DeKrafft.....do.....	100 00	J. W. DeKrafft.....
Randolph Coyle.....do.....	100 00	Randolph Coyle.....
Joseph H. Robins.....do.....	100 00	Joseph H. Robins.....
John Davis.....do.....	100 00	John Davis.....

B—Continued.

Names.	Amount received.	Signatures.
° Nathaniel P. Causin, jr., from 1st to 12th, inclusive, at \$1,000; from 13th to 31st inclusive, at \$1,200.....	\$93 34	N. P. Causin, jr.....
F. A. Tschiffely..... clerk.....	91 00	F. A. Tschiffely.....
Richard J. Morsell..... do.....	91 00	R. J. Morsell.....
James L. Cathcart..... do.....	91 00	Jas. L. Cathcart.....
A. G. Seaman..... do.....	91 00	A. G. Seaman.....
John S. Cunningham..... do.....	91 00	John Scott Cunningham.....
O. H. Bestor..... do.....	83 00	O. H. Bestor.....
A. H. Lawrence..... do.....	83 00	A. H. Lawrence.....
William H. Watson..... do.....	83 00	Wm. H. Watson.....
W. V. H. Brown..... do.....	83 00	Wm. V. H. Brown.....
John N. Ashton..... do.....	83 00	John N. Ashton.....
George Taylor..... do.....	83 00	G. Taylor.....
John Hood..... do.....	83 00	John Hood.....
A. S. H. White..... do.....	83 00	A. S. H. White.....
Edmund M. Evans..... do.....	83 00	Edmund M. Evans.....
Francis C. Goode..... do.....	83 00	F. C. Goode.....
Peter Wilson..... do.....	83 00	Peter Wilson.....
Jacob H. Hager..... do.....	83 00	J. H. Hager.....
John Todd..... do.....	83 00	John Todd.....
William Clyde..... do.....	83 00	William Clyde.....
Henry B. Foster..... do.....	83 00	Henry B. Foster.....
John E. Tuel..... do.....	83 00	J. E. Tuel.....
William Darby..... do.....	83 00	William Darby.....
John P. Frazer..... do.....	83 00	John P. Frazer.....
Vicesimus Turner..... do.....	83 00	V. Turner.....
William M. Royce..... do.....	83 00	W. M. Royce.....
DeWitt Kent..... do.....	83 00	DeWitt Kent.....
J. B. Rooker..... do.....	83 00	J. B. Rooker.....
° William F. Wallace, clerk, from 13th to 31st, inclusive.....	49 66	W. F. Wallace.....
John Scrivener, messenger.....	58 00	John Scrivener.....
John N. Ford.....	58 00	John N. Ford.....
Isaac Goddard, assistant messenger.....	29 00	Isaac Goddard.....
Samuel Walker..... do.....	54 00	Sam'l Walker.....
John H. Quincy..... packer.....	37 50	Thos. H. Quincy.....
Grafton Powell..... do.....	37 50	Grafton Powell.....
	8,036 00	

* These clerks have been paid short this month in order to bring their monthly payments regular during the remainder of the quarter.

GENERAL LAND OFFICE,
June 28, 1856.

SIR: In compliance with the order of the Court of Claims of 11th instant, in the case of John H. Waggaman *vs.* The United States, addressed to the Hon. Secretary of the Interior, and referred to this office for response, I enclose herewith, marked A, a copy of the record referred to in my letter of 31st March last to J. F. Polk, esq., also, marked B, the form of the receipt given by said Waggaman for his salary after the 13th January, 1845, and have to state that no evidence is found that said Waggaman ever demanded his salary at the rate of \$1,300 per annum after the 13th January, 1845, but, on the contrary, at the expiration of each month, signed a receipt similar to that herewith furnished whilst he continued in office.

As bearing upon this subject, and for the information of the Court, I enclose copies of the correspondence between Mr. Polk and this office in relation to this claim, as follows: March 24, 1856, J. F. Polk to Commissioner, with reply; April 8, 1856, same to same, and reply; June 12, 1856, same to same, and reply, covering all the papers, &c., in the case.

With much respect,

THOS. A. HENDRICKS,
Commissioner.

SAM'L H. HUNTINGTON, Esq.,
Chief Clerk Court of Claims.

WASHINGTON, D. C., March 24, 1856.

SIR: As attorney for John H. Waggaman, esq., late a clerk in the General Land Office, I respectfully request that you will inform me what was his salary immediately prior to the 13th of January, 1845; whether his salary was increased or diminished from that date, inclusive; if so, how much; and if afterwards, at what period or periods, and how much; when did his services as a clerk terminate, and what was the whole amount paid him as compensation for clerical services from and after the day above designated. Also, in case it shall appear that his salary was at any time reduced, or his appointment revoked, when, and by whose act or authority, was such reduction or revocation made. An early answer will oblige

Your very respectful and obedient servant,

J. F. POLK,
Attorney, &c.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

GENERAL LAND OFFICE,
March 31, 1856.

SIR: In reply to your inquiry of 24th instant, I have to state that the salary of Mr. John H. Waggaman appears from the pay-rolls of

this office to have been \$1,200 per annum prior to the 13th January, 1845, and it further appears from said rolls that his salary continued at the same amount until the 1st of July, 1853, on which date the office was reorganized, in accordance with the provisions of the act of Congress of 3d March, 1853, and Mr. Waggaman reappointed to a first class clerkship, at \$900 per annum, and continued as such first class clerk till the 7th day of August, 1854, when his services were dispensed with.

There is an entry in the record on 13th January, 1845, that \$100 was to be added to Mr. Waggaman's salary, but this appears, however, not to have been carried into effect, but withdrawn, as the record of his salary account shows he was set down at only \$1,200 to July, 1853, which was accepted and regularly receipted for by him as in full.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

JOSIAH F. POLK, Esq.,
Washington, D. C.

WASHINGTON CITY, D. C.,
April 8, 1856.

SIR: As attorney for John H. Waggaman, esq., I have the honor to present herewith for payment his account for arrears of pay appearing to be due to him for services rendered as a clerk in the General Land Office.

Should there be any difficulty in the way of making payment, I have to request that you will be so kind as to return the account to me, together with a statement of the objections thereto, as soon as practicable, and oblige

Your most respectful and obedient servant,

J. F. POLK,
Attorney for Mr. Waggaman.

Hon. THOS. A. HENDRICKS,
Commissioner of the Land Office.

GENERAL LAND OFFICE,
April 21, 1856.

SIR: I return herewith the account of Mr. John H. Waggaman for "increase of salary under letter of the Commissioner of the General Land Office, dated January 13, 1845, at the rate of one hundred dollars per annum, for services rendered from January 13, 1845, to July 1, 1853, being eight years, five months, thirteen days, at \$100 per annum, amounting to \$845 03," received in your letter of 8th instant; and, in reply to your request to state the objections, if any, to its payment, I have to remark that the records of this office furnish no further

evidence on this subject than was communicated to you on 31st ultimo; and, in the opinion of this office, Mr. Waggaman's claim cannot be sustained.

Very respectfully, &c.,

THOMAS A. HENDRICKS,
Commissioner.

J. F. POLK, Esq., *Present.*

WASHINGTON, D. C., *June 12, 1856.*

SIR: You will oblige me if you will be so kind as to inform me what was the number of clerks at salaries of \$1,300 each in the General Land Office on the 13th of January, 1845, before Mr. John H. Waggaman, then a clerk in said office, at a salary of \$1,200, was notified by letter of the Commissioner of that date that one hundred dollars had been added to his salary.

I wish to use this information in the Court of Claims, in a case there pending, in which Mr. Waggaman is the claimant, and for whom I am the attorney of record.

I have the honor to be, sir, very respectfully, your obedient servant,
J. F. POLK.

Hon. THOMAS A. HENDRICKS,
Commissioner General Land Office.

GENERAL LAND OFFICE,
June 12, 1856.

SIR: I am in receipt of your letter of this date, inquiring the number of clerks in this office at \$1,300 each on the 13th January, 1845, before Mr. John H. Waggaman, then a clerk at \$1,200, was notified that \$100 had been added to his salary, and, in reply, have to inform you that, from the pay-rolls made up on 31st December, 1844, and also on 31st January, 1845, it appears that on each of those dates there were sixteen clerks of that class, exclusive of Mr. Waggaman.

Very respectfully,

THOMAS A. HENDRICKS,
Commissioner.

J. F. POLK, Esq., *Present.*

IN THE COURT OF CLAIMS.

ON THE PETITION OF JOHN H. WAGGAMAN.

Brief of the Solicitor.

This claim is founded on a letter of the Commissioner of the General Land Office, dated January 13, 1845, notifying him that one hundred dollars was added to his salary, to take effect from that day.

Waggaman continued in the Land Office for eight years afterwards,

and received only \$1,200, and receipted for that as being in full of his pay, &c.

The present Commissioner says that there were then 16 clerks receiving thirteen hundred dollars per annum—all that were authorized by law. It is said, however, that the annual reports show the contrary, and vol. 4, 1st sess. 29th Congress, H. Ex. Doc. 99, p. 27, is offered to show that Hendricks was mistaken. But it is probable that the entry in relation to Mr. Wood, where he is set down as receiving \$1,150 per annum, is a mistake, because, if he was of that grade, his name could not have appeared at the head of the \$1,300 clerks.

This table also shows that Waggaman was but a \$1,200 clerk, and there can be no doubt about the fact that he was never, in fact, a clerk at the rate of \$1,300. It is immaterial what the reason was; whether, as Hendricks says, because there was no vacancy at the date of Blake's letter, or some other cause not made known to the Court. It is enough for the Court to know that he never entered upon that clerkship, and continued in the other clerkship till the end of his service. The Court has been made acquainted in Page's case with the fact that a change of clerkship is indicated only by the assignment of a different salary as a clerk; and if the fact were true that Mr. Waggaman had not only been notified that he was to receive \$1,300, and had actually received such a salary for a given period, but was afterwards put upon the lower grade, (\$1,200,) this would be conclusive evidence that he filled a \$1,200 clerkship, and not a \$1,300 clerkship; and it is not of the least legal consequence to know why the discontinuance of the higher salary took place. The fact that the party received the pay annexed by law to a certain clerkship is, under the course of business in the departments, the evidence of his filling that clerkship, as there are no specific duties assigned to the different grades, and those who perform the same duties often receive very different rates of pay.

M. BLAIR.

JOHN H. WAGGAMAN *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

This is a demand against the United States for arrears of pay alleged to be due the claimant as a clerk in the General Land Office from the 13th of January, 1845, to the 1st of July, 1853, a term of eight years five months and thirteen days, amounting to the sum of \$845 03.

The facts proved are as follows:

For some time immediately preceding the 13th of January, 1845, the claimant was a clerk in said office at a salary of \$1,200. On that day he received from the Commissioner of the office the following letter:

“GENERAL LAND OFFICE, *January 13, 1845.*

“SIR: One hundred dollars have been added to your salary, to take effect from this date.

“THO. H. BLAKE, *Commissioner.*

“MR. JOHN H. WAGGAMAN,

“*General Land Office.*”

In 1836 an act of Congress was passed, which was in force at the date of the above letter, authorizing the Commissioner of said office to employ clerks at different salaries, and among them sixteen clerks, at salaries of \$1,300 each.—(5 Stat. at Large, pp. 111, 112, § 10.)

On the 12th of June, 1856, the claimant's attorney wrote to the Commissioner, inquiring as to the number of clerks in the office at \$1,300 each on the 13th of January, 1845. The Commissioner's answer states "that, from the pay-rolls made up on 31st December, 1844, and also on 31st January, 1845, it appears that on each of those dates there were sixteen clerks of that class, exclusive of Mr. Waggaman."

It appears, by a communication from said Commissioner to this Court, "that no evidence is found that said Waggaman ever demanded his salary at the rate of \$1,300 per annum after the 13th January, 1845, but on the contrary, at the expiration of each month, signed a receipt similar to that herewith furnished whilst he continued in office."

The receipt above referred to by the Commissioner is as follows:

"GENERAL LAND OFFICE, *January 31, 1845.*

"JANUARY, 1845.

"We, whose names are hereto subscribed, acknowledge to have received from R. H. Williamson, pay agent, the sums opposite our respective names, in full payment of our salaries in said office, for the month ending on the 31st day of January, 1845."

In that receipt, the sum opposite the claimant's name is \$100.

That receipt, and the others of the same kind subsequently given by the claimant whilst he remained in office, show very clearly that, notwithstanding said letter of the Commissioner of the 13th of January, 1845, the claimant continued, while in office, to be a clerk at a salary of \$1,200.

As the claimant, after said notice, continued for more than eight years to receive, monthly, the \$1,200 salary, and to give receipts in full for the same without demanding any more, and as there were in office, when said notice was given, sixteen clerks with \$1,300 salaries, exclusive of the claimant, (the whole number authorized by law,) we must presume that the claimant received all he was entitled to.

Our opinion is, that there is no foundation for this claim.

CAPTAIN DANIEL HARBAUGH.

JANUARY 13, 1859.—Laid upon the table and ordered to be printed.

Mr. MAYNARD, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Captain Daniel Harbaugh, have had the same under consideration, and beg leave to report:

That Captain Harbaugh claims to have advanced the sum of \$297 48 in equipping and supporting a volunteer company in the war of 1812. His company belonged to the "mounted Ohio militia," and was attached to the regiment of Lieutenant Colonel John Hinman, which entered the service on the 25th of August, and was discharged therefrom on the 19th of December of the same year. The claim was presented for payment for the first time in 1851, and rejected by the executive department of the government. It then came before Congress in 1852, and again in 1857, without any action being had thereon. In February, 1858, it was again presented, and referred to this committee for examination and report.

In reply to a call made on the Secretary of War for information, your committee received the following report:

TREASURY DEPARTMENT,
Third Auditor's Office, May 8, 1858.

SIR: The memorial and papers of Capt. Daniel Harbaugh, referred by you to this office for a report on the 9th, with a letter relative thereto, addressed to you on the 7th ultimo by the Hon. S. S. Marshall, chairman of the Committee of Claims of the House of Representatives, I have the honor to return herewith.

In reply to the request of the committee to be furnished with such information in relation to the claim set up by Captain Harbaugh as may be in possession of your department, I have the honor to submit the following as the result of an examination of the subject in this office:

The memorialist sets forth that he was captain of a company of mounted Ohio militia, attached to Lieut. Col. John Hindman's regiment in the war of 1812, which entered the service on the 25th of August, and was discharged therefrom on the 19th of December of the same year. That he expended a large sum of money in furnishing and supporting said company, sending expresses and other detached

duties during said period, and that said money has never been refunded to him by the United States. That there is now justly due to him from the United States at least the sum of two hundred and ninety-seven dollars and forty-eight cents, with interest from the date of its expenditure, and that as evidence thereof he presents vouchers and papers from No. 1 to 41 inclusive, which he prays may be taken as a part of his memorial, and asks that the money so expended may be refunded to him with interest.

Appended to the memorial is a list of the vouchers from 1 to 41, mentioned therein, amounting to \$297 48, to which is the deposition of the claimant that they were all paid by him for supplies for his company, sending expresses, and other detached services, and that he has never received anything from the United States therefor, nor has he heretofore charged the same in any of his accounts or any portion thereof.

It is exceedingly difficult to deal with such claims as that now set up, for the first time, by Captain Harbaugh, with any degree of certainty or satisfaction. The lapse of time, the destruction of the public accounts, receipts, and vouchers, by the enemy on the capture of the city in 1814, and again by the burning of the Treasury building in 1833, has left the government almost *without* defence in such cases by the loss of its evidences of payment. Captain Harbaugh has not explained, nor can any even plausible reason be conceived, why, with the original evidence in his possession of his claim upon the government, he should have delayed to present it for forty years, with a superadded claim for interest for that long period, occasioned solely by his own neglect and indifference.

The records of this office show that Captain Harbaugh did suppose he had a claim growing out of this service, but not of the character of the present claim. It was for a balance of *pay* for *his personal* services as the captain of his company, and as such he applied for it through different members of Congress in 1838, 1848, and lastly in 1851, and it was not until the last and final showing that the government had long ago paid him everything that was due him on that score, that he seems to have bethought himself of his present demand.

Captain Harbaugh's company belonged to the division commanded by Major General Elijah Wadsworth, and was mustered into service on the 25th of August and discharged on the 19th of December, 1812, a service of 117 days. It was a mounted company, and consisted of 4 commissioned officers, 4 sergeants, 1 farrier, 1 trumpeter, and 22 privates, making in all only 32. Of these 1 sergeant and 1 private deserted on the 29th of August and 3d of September; 2 privates were absent without leave from the 28th of August and 6th of September, on which last day another private died, by which the strength of the company was reduced to 27, all told, from the 6th of September, 1812. The rations and forage due the commissioned officers was commuted into money, and paid them by Paymaster David Clendennin, together with their pay after the termination of their service, either in 1813 or early in 1814, leaving but 23 non-commissioned officers and privates to be supplied with forage and subsistence in kind, and entitled to 1735 rations of each. Of this number 19 of the men professed to

have supplied themselves, at their own expense, 952 rations of each, which were commuted at 25 cents, and paid to them in money by Paymaster Clendennin upon a regular pay roll, amounting altogether to \$238 50, said payments being witnessed by Captain Harbaugh himself. Deducting the rations thus paid for left but 783 due the company, worth, according to the same rate of commutation, \$195 75, to be supplied at the expense of the United States, or by Captain Harbaugh, being \$101 73 less than the principal amount of his present claim.

The question then is, from what source was the company so supplied? The accompanying letter of the Hon. Elisha Whittlesey, who was present as a member of the command of General Wadsworth on that occasion, together with the accounts of the latter and of Benjamin Tappan, Comfort S. Mygatt, William Harbaugh, Hiram Hanchett, and David Clendennin, commissaries and quartermasters, which fortunately escaped the conflagration of the Treasury building, show how said command was supplied.

That purchases were made of the citizens on a credit by persons duly appointed to that duty, who certified the amounts due in each case; and the bills of purchase so certified were afterwards paid by said commissaries and quartermasters from the proceeds of drafts drawn by General Wadsworth on the Secretary of War, amounting to \$14,961 50.

The accounts above mentioned show large issues to General Wadsworth's whole command in August, September, October, and November, 1812, as well as payments for numerous purchases made, in the manner above referred to, of everything afforded by the country, and necessary for the use of a military force on active duty in the field.

Among them is a payment to the claimant, Daniel Harbaugh, by Quartermaster William Harbaugh, for a purchase of thirty-two yards of linen on the 8th of September, 1812.

The abstracts of issues, unfortunately, do not, in hardly a single instance, name the commanders of the different bodies of troops composing General Wadsworth's division which were supplied in this manner, and hence the impossibility, at this late day, of *positively* proving, by record or other evidence, that Captain Harbaugh's small company was supplied in the same manner as the rest of the division.

The vouchers produced by Captain Harbaugh appear to be little more than memorandums of various small supplies furnished by the citizens for his company from time to time, including meals for himself and men, cigars, mending the captain's bridle, and washing his clothes.

Only vouchers 9, 16, 21, 26, 29, 30, 33, 35, 36, and 37, amounting to \$52 49, are receipted directly in favor of Captain Harbaugh, and many of them are not receipted at all. The sum of \$20 91, charged in voucher 37, is again charged in voucher 39.

Memorandums representing \$24 27 appear to have been contracted in August, \$135 69 in September, \$16 92 in October, \$2 62½ in November, none in December, and \$117 99 are without any dates whatever. According to the ordinary rules and principles of settlement and accountability, scarcely any of these vouchers would be

sufficient to pass the amount represented to the credit of the holder, and I must be allowed to express my surprise that, if they really represent an expenditure for public purposes of the private funds of Captain Harbaugh, never since refunded, that he should have allowed forty years to elapse without any attempt to obtain repayment, when he had so many opportunities of doing so within one year thereafter.

I am, very respectfully, your obedient servant,

ROBERT J. ATKINSON, *Auditor.*

Hon. JOHN B. FLOYD,
Secretary of War.

In the opinion of your committee this report of the Third Auditor disposes of the claim of Captain Harbaugh, and shows the claimant is, at least, mistaken in the items of his account, and that there is nothing due him from the government. Your committee, therefore, report back the case to the House, with a recommendation that the prayer of the petitioner be not granted.

JAMES COLLIER.

[To accompany Bill H. R. No. 780.]

JANUARY 13, 1859.

Mr. JOHN C. KUNKEL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of James Collier "for relief," have had the same under consideration, and beg leave to report:

That claimant was sued in the Circuit Court of the United States for the Southern District of New York, when the jury found, and the said court certified that there was due claimant \$8,110 29. An exemplification of this record was presented to the Treasury Department and payment demanded. In reply Secretary Cobb wrote the following letter:

"TREASURY DEPARTMENT, April 21, 1858.

"SIR: I acknowledge the receipt of your communication of yesterday's date, inclosing 'exemplification of order and judgment of the United States Circuit Court, Southern District of New York,' and in reply have to state that the department possesses no authority to pay the judgment in your case without a specific appropriation of money by Congress for the object.

"The papers enclosed are herewith returned.

"I am, very respectfully,

"HOWELL COBB,
"Secretary of the Treasury.

"JAMES COLLIER, Esq.,

"At Brown's Hotel, Washington, D. C."

As the only difficulty in the way of payment was a special act authorizing it, the claimant now asks this relief. After a careful examination of all the facts involved, your committee are of the opinion that the amount claimed should be paid, and they report a bill accordingly and recommend its passage.

REUBEN B. HEACOCK.

JANUARY 13, 1859.—Laid upon the table and ordered to be printed.

Mr. GOODWIN, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, to whom was referred the claim of Reuben B. Heacock, "praying compensation for property destroyed on the Niagara frontier," have had the same under consideration and beg leave to report:

That this is a claim similar in all respects to that of Eli Hart, upon which your committee lately made an adverse report, and referring to that report and the principles there laid down your committee report this case back to the House and recommend that the prayer of the petition be not granted.

REPORT

Presented to the House of Representatives
January 15, 1887

Mr. Chairman, I have the honor to acknowledge the receipt of your letter of the 10th inst., and in reply to inform you that the report of the Committee on the subject of the proposed amendment to the Constitution, which was referred to me, has been prepared and is now being printed.

REPORT

The Committee on the subject of the proposed amendment to the Constitution, which was referred to me, has the honor to acknowledge the receipt of your letter of the 10th inst., and in reply to inform you that the report of the Committee on the subject of the proposed amendment to the Constitution, which was referred to me, has been prepared and is now being printed.

The report of the Committee on the subject of the proposed amendment to the Constitution, which was referred to me, has been prepared and is now being printed. The report is a valuable contribution to the history of the Constitution, and it is hoped that it will be of great service to the House and the Senate in their consideration of the proposed amendment.

EZRA THURBER.

JANUARY 13, 1859.—Laid upon the table and ordered to be printed.

Mr. GOODWIN, from the Committee of Claims, made the following

R E P O R T.

The Committee of Claims, to whom was referred the petition of Ezra Thurber, "praying compensation for the loss of a house destroyed by fire while under lease to the United States," have had the same under consideration and beg leave to report:

That this is a claim for the value of a house which was leased to the United States as a custom-house, and while so used was destroyed by fire. The same claim was presented to the 11th Congress, 2d session, and rejected on the ground that the government did not insure the building against destruction by fire; and without such an insurance there could not be the shadow of liability on the part of the government. The administrators of said Thurber, who now present the claim, allege that the building was destroyed during the war of 1812, when the records of your committee show that the claim was rejected on the 29th of December, 1809. Without further comment, your committee report back the case with the recommendation that the prayer of the petitioner be not granted.

LUCY G. GRAY.

JANUARY 13, 1859.—Laid upon the table and ordered to be printed.

Mr. GOODWIN, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Lucy G. Gray, widow of Doctor Gray, "praying compensation for property destroyed by the enemy in 1814," have had the same under consideration and beg leave to report :

That the claim is for certain medicines, books, cows, and other plunder taken from Doctor Gray by the enemy during the war of 1812. It is not pretended that these were in any manner in the possession of the government of the United States, or that the government was in any way whatever liable for their loss or destruction. There is no evidence, however, filed in support of the demand; but if the facts as alleged were all proven there would still be no claim upon the government. Your committee therefore report back the case, with a recommendation that the prayer of petitioner be not granted.

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AMOS WILMOT.

JANUARY 13, 1859.—Laid upon the table and ordered to be printed.

Mr. GOODWIN, from the Committee of Claims made the following

REPORT.

The Committee of Claims to whom was referred the petition of Amos Wilmot, "praying compensation for the loss of a certain fleet brown mare, in the war of 1812," have had the same under consideration and beg leave to report:

That claimant alleges to have furnished a certain brown mare valued at from \$125 to \$150; wear and tear of equipage, \$25 to \$30; and \$15 in money, to Wm. Frazer as his substitute in the war of 1812. The claim was submitted to the proper accounting officers of the government and rejected. The reasons of this rejection are clearly set forth in the following letter from the Third Auditor of the Treasury:

TREASURY DEPARTMENT,
Third Auditor's Office, February 6, 1857.

SIR: I have had the honor to receive your letter of the 2d instant, transmitting papers in support of a claim of Amos Wilmot, for the loss of a "certain fleet brown mare," valued at from \$125 to \$150, for wear and tear of equipage to the amount of from \$25 to \$30, and for \$15 in money; all furnished by him to his substitute, one William Frazer, whilst he was a private of Captain Foster Barnard's company of cavalry in the war of 1812. The proof being depositions of the claimant and said William Frazer as to the effect that the mare and equipage was furnished by the former to the latter as his substitute, upon which he marched to the Niagara frontier in October, 1813, under the command of Lieutenant Aaron Remer. That he was in service as substitute as aforesaid about forty days, when he was discharged. That while in said service he served as "express patrol," in consequence of which the mare "received injuries across the loins and kidneys" from which she died on her *return home*; and that the equipage, when returned to the claimant, was not worth more than "half price."

Upon examination, I do not find that any military company commanded by Captain Foster Barnard was ever mustered into the service of the United States. It appears, however, that a cavalry company,

under the command of Captain Aaron Remer, stated in the depositions to have been a lieutenant of Captain Barnard's company, was mustered into service on the 8th of November and discharged on the 17th of December, 1813. Upon the rolls of that company is the name of William Frazer as one of the privates, but that of Amos Wilmot does not appear in any capacity whatever. Frazer appears to have been paid in full, with nine days' travelling allowances for 180 miles for his return home, including 40 cents per day for the use and risk of his horse, upon which he was mounted on the day of his discharge. The rolls, which are very full and complete, afford not the slightest indication of Frazer being a substitute for any one, or of the loss of a horse by him whilst in the military service of the United States. On the contrary, the proof is from the payment of 40 cents for the use and risk of his horse for every day he was in service, and for nine days thereafter, that he did not sustain any such loss; and if the mare died at the home of the claimant, after discharge from service, as is admitted by both Wilmot and Frazer, and after a march of 180 miles in the depth of winter, the loss is as likely to have been caused from injuries received on the march as whilst in the service of the United States. Indemnity for a loss like this has never been provided by any law of Congress, general or special, from the foundation of the government to the present time, and of course this claim has never been paid by the United States. All the papers are herewith returned.

With great respect, your obedient servant,

ROB. J. ATKINSON, *Auditor.*

Hon. EBENEZER KNOWLTON,

House of Representatives.

Your committee fully concur in the views of the Auditor, and therefore report back the case with a recommendation that the prayer of the petitioner be not granted.

D. H. JOHNSON.

[To accompany Bill H. R. No. 781.]

JANUARY 13, 1859.

Mr. GOODWIN, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of D. H. Johnson, "praying compensation for taking the census in the year 1850," have had the same under consideration, and beg leave to report:

That the claimant by his memorial represents as follows :

*To the honorable the Senate and House of Representatives
of the United States in Congress assembled :*

Your memorialist, Daniel H. Johnson, of Prairie du Chien, Wisconsin, respectfully represents to your honorable bodies that he was appointed an assistant marshal for the purpose of taking and reporting the census for the district comprising the county of La Pointe, (now La Pointe and Douglass counties,) Wisconsin, in 1850 ; that he was then as now, a resident of Prairie du Chien, Wisconsin, and was so appointed instead of a resident of the district, as he was informed and believes, because the district was so remote and difficult to communicate with that it was impossible to ascertain to whom to send the proper commission in time to have the same forwarded, executed, and returned within the time limited by the census act.

Your memorialist further represents that in order to reach the extreme western end of said district, which lies some twenty-five miles above the head of Lake Superior, he ascended the Mississippi river some seven hundred miles to Sandy Lake, in Minnesota ; and thence by a succession of small streams and *portages* or carrying places to St. Louis river ; and thence down that river to Fond du Lac.

Your memorialist further represents that from the head of steamboat navigation on the Mississippi the above route could then only be travelled in canoes and on foot, assisted by at least two *voyageurs*, who had to be equipped, provisioned, and paid for the whole trip going and returning, and for all the time they were detained at either end of the route ; that on the return trip your memorialist found the waters of St. Louis river so low as to make the navigation extremely difficult, the channel above Fond du Lac being full of rocks and rapids, so that

your memorialist and his *voyageurs* were twelve days in going from La Pointe to Sandy Lake.

Your memorialist further represents that he was obliged to employ an interpreter in taking the census of La Pointe county, many of the inhabitants being only acquainted with the French or Chippewa languages.

Your memorialist further represents that the population of La Pointe county was at that time sparse and scattered in small settlements along the shore and among the islands of Lake Superior from Fond du Lac to the line between Wisconsin and Michigan, the whole number, exclusive of Indians, being only about five hundred. It was therefore a very difficult and expensive undertaking to visit all the inhabitants at their homes, and could only be accomplished by the continual use of boats and the assistance of at least two boatmen or voyageurs.

Your memorialist further represents, that his compensation for the above services amounted to a little over ninety dollars, the same being ascertained by the same method of computation employed to determine the compensation of assistant marshals in the cities and thickly settled districts, your memorialist being allowed nothing for his labor and expense in going to and returning from the district, nor for his extra trouble and outlay in collecting the necessary statistics in that thinly settled and half civilized region.

Your memorialist therefore submits, that he is entitled to extra compensation for the above service to the amount of at least two thousand dollars, and prays your honorable bodies to appropriate that amount for that purpose, and as in duty bound he will ever pray, &c.

DANIEL H. JOHNSON.

MARCH 1, 1858.

STATE OF WISCONSIN, *Crawford County* :

Daniel H. Johnson being first duly sworn, says that the facts set forth in the above memorial are true. Witness my hand and [L. S.] notarial seal, this 1st day of March, 1858.

O. B. THOMAS, *Notary Public,*
Crawford county, Wisconsin.

STATE OF WISCONSIN, *Crawford County* :

Hiram Knowlton being first duly sworn according to law upon his oath, saith that he was during the latter part of the year 1850 judge of the sixth judicial court of Wisconsin, comprising the county of La Pointe; (now Douglass and La Pointe;) that he visited that county that year for the purpose of holding court there, immediately after Mr. Johnson, the within named memorialist, had completed the census of the county. Deponent then went to Prairie du Chien by the route mentioned in the within memorial. Deponent further says that the within description of that region, and the means of visiting and returning from the same, are substantially correct. Deponent further says that he is acquainted with the within named memorialist, and be-

lieves that his statements are true, and that he is justly entitled to the relief he claims in the within memorial.

HIRAM KNOWLTON.

Subscribed and sworn before me this 1st day of March, 1858.

[L. s.]

O. B. THOMAS, *Notary Public*,
Crawford county, Wisconsin.

STATE OF WISCONSIN, *Crawford County*:

Buel E. Hutchinson being first duly sworn says he was a resident of Minnesota in 1850; that the within named memorialist performed the service within indicated; that the statements of said memorial relative to the distance, modes of travel, facility of access and the means of communication, and the remoteness of the settlements from each other and the populous portions of Minnesota and Wisconsin, together with the necessity of the heavy expenses represented, are substantially true.

BUEL E. HUTCHINSON.

Subscribed and sworn to before me, this second day of March, A. D. 1858.

[L. s.]

WILLARD MERRILL, *Notary Public.*

The committee find that the foregoing statements of the memorialist are established by the proofs submitted for their consideration, and in view of the trifling compensation he received for the service rendered, (to wit \$90,) believe that his actual and necessary expenses and disbursements should be allowed him in addition to the \$90 already paid, and they therefore report a bill for the same, and recommend its passage.

SAMUEL PERRY.

[To accompany Bill H. R. No. 782.]

JANUARY 13, 1859.

Mr. DAVIDSON, from the Committee of Claims, made the following following

REPORT.

The Committee of Claims, to whom was referred the petition of Samuel Perry, have had the same under consideration and beg leave to report:

That the same subject matter has been before Congress for several years, and has been reported on favorably at several sessions by this committee. The report made in 1849 presents the merits of the case, and your committee therefore adopt it as follows:

IN THE HOUSE OF REPRESENTATIVES, *January 3, 1849.*

Mr. J. A. ROCKWELL, from the Committee of Claims, made the following report.

The Committee of Claims, to whom was referred the petition of Samuel Perry, report:

That nothing new having been brought to the attention of this committee in relation to the claim of the petitioner, the former report from this committee is adopted, and made part of this, as fully expressive of the views now entertained. The bill reported at the last Congress is again most respectfully submitted, and its passage recommended.

IN THE HOUSE OF REPRESENTATIVES, *June 17, 1846.*

The Committee of Claims, to whom was referred the petition of Samuel Perry, report:

This case was reported favorably upon by this committee at the last session of Congress. That report is concurred in, except in so far as it allowed payment for that portion of the freight which was lost by the sinking of the boat. A deduction of \$250 has been made for the

loss of the 30 barrels of pork and the 20 barrels of salt. With the above exception, the bill herewith reported is like the one of last year.

FEBRUARY 25, 1845.

In the case of Samuel Perry, the Committee of Claims report:

J. H. McClure & Co. (Samuel Perry being the company) undertook, by written agreement, to transport a large quantity of Indian supplies "from some point on the Ohio river, not higher than Cincinnati, to Fort Coffee, Arkansas." A portion of the supplies was lost by the sinking of the boat on the Mississippi river, for which loss \$638 98 was deducted from the freight. The proof is clear that the loss was not on account of negligence or want of care on the part of the carrier; and as, by agreement between the government and said J. H. McClure & Co., the freighter was to be chargeable only for damages which could be "avoided by ordinary care and attention," the committee are of opinion this amount was improperly deducted. They therefore report a bill for the amount.

Your committee therefore report back the case with the accompanying bill and recommend its passage.

JOSEPH C. G. KENNEDY.

[To accompany bill S. 212.]

JANUARY 13, 1859.

Mr. ARNOLD, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill 212, "for the relief of J. C. G. Kennedy," have had the same under consideration, and beg leave to report :

This case was before Congress at a previous session, and was reported on favorably by the House Committee of Claims. That report so clearly states the whole case that your committee now adopt it as their own, and report back the bill and recommend its passage.

Mr. KNOWLTON, from the Committee of Claims, made the following report.

The Committee of Claims, to whom was referred the memorial of Joseph C. G. Kennedy, late superintending clerk of the Census, report as follows :

By an act of 3d March, 1849, a Census Board was constituted to make preliminary arrangements for taking the Seventh Census, with authority to appoint a secretary. The law provided no compensation for said secretary ; but by the act of 23d May, 1850, the compensation of that officer was fixed at \$3,000 per annum. The act last referred to continued the duties of the board, and made general provision for taking the census, and provided for the appointment of a superintending clerk, at a salary of \$2,500 per annum ; this sum having been substituted in the Senate for a compensation of \$3,000 per annum in the House bill. The secretary of the Census Board was also appointed superintending clerk ; his services in the former capacity being also retained, as will appear by the following, dated in the second month of his service as superintending clerk :

“ OFFICE OF THE CENSUS BOARD,
Washington, July 1, 1850.

“ Mr. Kennedy, appointed secretary of the Census Board, in accordance with the act of March 4, 1849, continues to perform his duties as

such, and will continue to perform the same, until the requirements of the 20th section of the act of May 23, 1850, have been complied with and the accounts settled.

“J. M. CLAYTON,
 “REVERDY JOHNSON, } *Census Board.*”
 “J. COLLAMER,

The Comptroller of the Treasury, it appears, demurred to the payment of the \$3,000 salary, on the ground that Mr. Kennedy having accepted the superintending clerkship, and used its franking privilege, and the clause allowing \$3,000 being for services previously rendered. Under these circumstances, the Secretary of the Interior, under whose control the Census fund was disbursed, addressed a communication to the Census Board in the following words:

“DEPARTMENT OF THE INTERIOR,
 “Washington, September 30, 1851.

“GENTLEMEN: Mr. J. C. G. Kennedy was appointed by you secretary of the Census Board, with a salary of \$3,000 per annum. He was also appointed by this department superintendent of the Census. His salary in the latter capacity is fixed by law at \$2,500. He has discharged the duties of both offices, but has claimed and received, as his compensation heretofore, \$3,000. A question has now been made by the accounting officers, as I am informed, as to the amount which he is to receive in future. It is said that your board has completed its duties, and is to be regarded as dissolved; and therefore that Mr. Kennedy is no longer entitled to receive compensation as secretary, but only as superintendent. I have received no official notice from you of the completion of your duties, or that your board has dissolved itself. I conceive that you are the proper persons to decide that question, and that the accounting officers have no authority to dissolve the Census Board without its consent; and I therefore ask the favor of you to say whether you regard your labors as ended, and your secretary discharged from his duties; and if so, at what date his services ceased. If, on the other hand, you regard yourselves as still constituting a board, and Mr. Kennedy as in your service, you will please say so, and advise me hereafter when you shall conclude to dissolve the Census Board and release the secretary from his duties.

“Very respectfully, &c.,

“ALEX. H. H. STUART, *Secretary.*

“TO DANIEL WEBSTER,
 “J. J. CRITTENDEN, } *Members of the Census Board.*”
 “N. K. HALL,

In reply to the foregoing communication, the Census Board responded as follows:

“We have received your letter of to-day, and have the honor to reply, that we do not consider the Census Board (of which we are members) as dissolved, or Mr. J. C. G. Kennedy, the secretary of that board, as discharged from office. The duties for which that board was consti-

tuted, and the secretary appointed, have not been finally completed. We regard the board as still continuing, and the secretary as still in office, and as entitled as such to the salary of \$3,000 per annum, and at that rate.

“We are, very respectfully, yours, &c.,

“J. J. CRITTENDEN.

“DANIEL WEBSTER.

“Hon. A. H. H. STUART,

“*Secretary of the Interior.*”

It thus appears, that sixteen months after entering upon the duties of the superintending clerkship, that officer had the best authority for believing himself entitled to, and for receiving, the salary of \$3,000; and it is quite clear that, had another person been appointed to one of the offices, the two salaries would have been paid.

It appears, however, that, owing to the continued objections of the Comptroller, the Secretary of the Interior addressed a letter to the chairman of the Judiciary Committee of the Senate, with a view to an amendment of the law, so as to overcome the scruples of the Comptroller, and he did so in the following words:

“DEPARTMENT OF THE INTERIOR,

“*Washington, March 8, 1852.*

“SIR: As some difficulty has occurred in regard to the salary of Mr. Kennedy, who has acted in the double capacity of census superintendent and secretary of the Census Board, I would respectfully suggest the introduction of a clause into the supplementary bill which you propose to report, fixing his salary at \$3,000. I think he richly merits it, and I can see no reason why he should stand on a different footing from the other heads of bureau.

“Very respectfully, &c.,

“ALEX. H. H. STUART.

“To Hon. A. P. BUTLER,

“*Chairman of the Judiciary Committee, U. S. Senate.*”

Upon the strength of this letter, which (in the absence of Judge Butler, chairman) was received by Judge Downs, the law was amended by changing the retrospective feature in the act of May 23, 1850, and Congress thus recognised the existence and continuance of the Census Board, by giving to its secretary the \$3,000 salary, while he “may necessarily be employed,” (act of July 30, 1852, 3d sec. Stat. at Large, vol. 10, p. 25.) It appears that subsequent to this action of Congress, the Comptroller of the Treasury represented to Judge Butler, on his return to the Senate, that the secretary of the Census Board, the petitioner, had in some way procured the enactment of such an amendment to the law of 1850 as would enable him, the petitioner, to claim and receive the two salaries, in the aggregate amounting to \$5,500, and urged the enactment of an amendment to prevent it. Upon this representation it appears that, without any reference to a committee in the Senate, an explanatory resolution was adopted—that of December 23, 1852.—(Stat. at Large, vol. 10, p. 260.)

This resolution was introduced to the attention of the House by Mr. Mead, of Virginia, who, in reply to a question from Mr. Stevens, of Georgia, thus represented its purport, as will appear by reference to Cong. Globe, vol. 26, p. 48, 2d session 32d Congress: "Mr. Mead. I will explain to the gentleman. As well as I can recollect, there was an error committed, by which the superintendent of the census might, by the strict letter of that bill, draw his pay both as clerk of the Census Board and superintendent of the census. When the Senate became aware of this mistake, they sent down to us this joint resolution for its correction. It gives the superintendent the *choice of being paid as clerk of the Census Board, or superintendent of the census.*" The joint resolution was then ordered to a third reading, and, according to order, was read a third time, and passed.

It appears, by reference to the Senate debates, (Cong. Globe, vol. 24, part 3, page 2226,) that after the Senate had passed and sent their joint resolution to this House, Mr. Downs, on his return from Louisiana, in view of what had been said and done in his absence, made a statement corroborating all the facts set forth in this report, and declares that this petitioner "is claiming nothing more than the salary of \$3,000, to which he is entitled, and to which he was entitled." The accounting officers of the treasury have decided the effect of the joint resolution, which, upon its passage, was represented, as the committee have previously observed, to not only cut down the salary of this petitioner to \$2,500, but to be of retrospective effect, and to deprive him of \$500 per annum which he had received; and he has been officially notified to repay said sum of \$500 per annum, with the threat of suit if he longer delays. The committee cannot believe that such apparent injustice was ever intended; and they are the more strongly impressed with this conviction, in view of the fact that the House of Representatives, in 1853, on a review of their previous action, and with direct reference thereto, adopted an amendment to the deficiency bill, by a vote of 72 to 48, granting to this petitioner the salary of \$3,000 per annum during the time he was employed, (Cong. Globe, vol. 26, p. 398,) which amendment was stricken out in the Senate; not only so, by the third section of the act approved 22d April, 1854, the salary of the office was raised to \$3,000, when the labors of the office had become comparatively trivial, and that compensation has been had by the petitioner's successor in office. Under all these circumstances, the committee feel bound to report favorably, and accordingly accompany their report with a bill.

SAMUEL NEWELL—ADMINISTRATOR OF.

JANUARY 13, 1859.—Laid upon the table and ordered to be printed.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, to whom was referred the petition of Titus Newell, administrator of Samuel Newell, deceased, have had the same under consideration and beg leave to report:

That the claim is for property destroyed by the British army at the time of their invasion of the northern frontier, in 1814. Claimant was the owner of certain lots of ground, with buildings thereon, which were taken possession of by the British troops and damaged to the amount of \$400. There is no principle of equity or justice upon which the government could be rendered liable for such damages. It would be a dangerous precedent, and an inducement to an invading army to lay waste and destroy private property. The whole course of precedents in Congress has been uniformly adverse to such allowances, and your committee, after a full examination of the subject, entirely approve the previous action of Congress on this and similar cases, and they therefore report the case back to the House, with the recommendation that the prayer of the petitioner be not granted.

MERCHANTS AND SHIP OWNERS OF PHILADELPHIA.

[To accompany Bill H. R. No. 786.]

JANUARY 13, 1859.

Mr. LANDY, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred the memorial of merchants, ship owners, and underwriters of the city of Philadelphia, praying the Congress of the United States to station a steam revenue cutter in the Delaware bay and on the coast adjacent thereto, have had the same under consideration and report the following:

The memorialists respectfully represent that the interest of the government of the United States, as well as the interest of the merchant and ship owner, would be greatly promoted by stationing a suitable steam revenue cutter in the Delaware bay and on the coast adjacent thereto, for the purpose of preventing the smuggling of goods in the various inlets in said bay and the adjacent coast, and to afford relief to distressed vessels, their passengers and crews, by which means the revenue of the country would receive greater protection, and valuable lives, ships, and cargoes might be saved.

The breakwater near Cape Henlopen, in the Delaware bay, is the only harbor to which the navigator can resort for protection during heavy gales south of Sandy Hook and north of Cape Charles, and is, in a commercial point of view, of the utmost importance to the whole country. The number of vessels arriving annually at the port of Philadelphia being, in 1857, 32,746, which, together with the great number bound to other ports on the Atlantic coast north and south of the Delaware bay that are frequently forced, by stress of weather, to resort to this harbor for protection; and as the services of the proposed cutter are intended for all that need assistance, being stationed there is not a question of a purely local character, but of general interest to the whole country. Therefore, considering the great number of vessels navigating the Delaware bay, and those passing and repassing that point, that find a shelter there in times of violent storms and adverse winds, renders it important that the government of the United States should have stationed there an efficient steam revenue cutter, in the preventive service, with power to resist the violence of the winds and stem the adverse tides, and capable of affording the assistance so fre-

quently required, particularly during the inclement season of the year. It frequently occurs that sail vessels, with valuable cargoes, approaching the coast or destined to this port are caught in heavy eastern gales, and, for the want of the proper power to make an offing, are driven upon a lee shore and lost, which, by the timely assistance of such a steam vessel as is proposed in this bill, could have been towed from danger to an offing, and lives and property thereby saved. The great number of arrivals at the port of Philadelphia, and the employment of steam as a propelling power in many and increasing instances in our merchant marine, renders it impossible for the sailing cutter now stationed there to board and examine them, and for the want of speed and power is unable to afford that protection to the revenue the interest of the government requires. The above reasons, so far as relates to the protection of the revenue, will apply with equal force to the cutter proposed, by the provisions of this bill, to be stationed at the port of New Orleans.

JAMES P. COOK

[To accompany Bill H. R. No. 787.]

JANUARY 14, 1859.

Mr. PHILLIPS, from the Committee of Ways and Means, submitted the following

R E P O R T .

The Committee of Ways and Means, to whom was referred the memorial of James P. Cook, with the accompanying papers, praying for compensation for services rendered and expenses incurred as United States marshal for the consular court at Canton, China, beg leave respectfully to report :

That the memorialist, James P. Cook, appears to have performed the services for which he asks compensation, and the amount asked seems to be at the usual rate. Under the treaty between the United States and China, and the regulations made thereunder, a marshal was a necessary officer in a consular court. The regulations made by the United States commissioner to China (Ex. Doc. No. 125, 1st session, 34th Congress) contemplate that the process of the consular court shall be executed by a marshal, and the accompanying documents from the Secretary of State show that Mr. Cook was properly appointed marshal, and performed the duties from the 1st January, 1854, to 15th December, 1856. Such an officer was indispensable; and while individuals taking the process of the court doubtless paid the costs thereof, yet these fees were used for public purposes, and accounted for by Mr. Cook; but the attendance of the marshal upon the consular court at Canton, and the performance of other duties and services of process issued by the United States, were without any payment. In the case of Mr. T. N. Johnson, who was marshal of the consular court at Shanghai, similar duties were paid for at the rate of \$1,000 per annum, (Statutes at Large, vol. 10, page 291,) a rate believed to be a fair and moderate compensation for such services.

Upon these principles the amount due to Mr. Cook for services as marshal at Canton would be four thousand seven hundred and sixty dollars, to which must be added the difference of exchange of thirty per cent., the market price of bills on the United States, making altogether six thousand and one hundred and eighty-eight dollars. In this manner the pay of government officers at China is usually made, and the committee report a bill paying Mr. Cook in this manner.

LAND HOLDERS IN THE VIRGINIA MILITARY DISTRICT,
OHIO.

[To accompany Bill H. R. No. 800.]

JANUARY 18, 1859.

Mr. RUFFIN, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom were referred the petitions of Henry Oursler, and other citizens of Ohio, praying further extension of time in which to locate land warrants issued to soldiers of the Virginia line, on continental establishment, in the Virginia military district, northward of the Ohio river, have had the same under consideration and report:

The petitions on this subject that have been considered by the committee are all substantially the same. The petitioners state "that there yet remains in the Virginia military district, in Ohio, about sixty thousand acres of land not yet entered and surveyed, and is entirely unoccupied. This land lies in the southern part of the district, and is generally very hilly and poor; but there are some good pieces along the water courses pervading the same, which holders of Virginia continental land warrants desire to enter. They are aware of the act of Congress passed on the subject August 31, 1852, and also of the act passed March 3, 1855. There are still *entries* of part of said lands made prior to January 1, 1852, which have not been surveyed, and which cannot be surveyed and patented without further legislation by Congress, and there is no mode now existing by which a great part of said sixty thousand acres can be entered and appropriated by holders of Virginia continental land warrants. They think notwithstanding the owners of said land warrants can obtain *land scrip* therefor under the law of 1852, yet it would be just and right for Congress to pass an act authorizing them to locate their warrants in said district if they preferred to do so."

The petitioners then ask Congress "to pass a law authorizing the holders of Virginia continental land warrants to enter lands in said district, and directing the principal surveyor of said district to survey the same and return his surveys and plats thereof, to the General Land Office for patents, as was formerly done." From a letter signed by the Commissioner of the General Land Office, which is herewith

submitted and made part of this report, it is evident that it will not be expedient to pass precisely such a law as that asked for by the petitioners; but the committee are of opinion that it will be both proper and expedient to pass an act allowing those holding lands by entries in the Virginia military district, Ohio, which was made prior to the first day of January, 1852, to have the same surveyed and patented. In view of the whole matter, your committee report the accompanying bill.

JANUARY 18, 1852

Mr. Rector, from the Committee on Public Lands, reads the following

REPORT

The Committee on Public Lands, to whom were referred the petition of Henry Gorder, and other citizens of Ohio, praying further extension of time in which to locate land warrants issued to soldiers of the Virginia line, on continental establishment, in the Virginia military district, northward of the Ohio river, have had the same under consideration and report:

The petition on this subject that have been considered by the committee are all substantially the same. The petitioners state "that there yet remain in the Virginia military district, in Ohio, about sixty thousand acres of land not yet entered and surveyed, and is entirely unoccupied. This land lies in the western part of the district, and is generally very hilly and poor; but there are some good places along the water courses traversing the same, which holders of Virginia continental land warrants desire to enter. They are aware of the act of Congress passed on the eighth August 31, 1852, and also of the act passed March 3, 1854. There are still entries of part of said lands made prior to January 1, 1853 which have not been surveyed, and which cannot be surveyed and patented without further legislation by Congress, and there is no mode now existing by which a great part of said sixty thousand acres can be entered and appropriated by holders of Virginia continental land warrants. They think notwithstanding the owners of said land warrants can obtain land under the law of 1852, yet it would be just and right for Congress to pass an act authorizing them to locate their warrants in said district if they preferred to do so."

The petitioners then ask Congress "to pass a law authorizing the holders of Virginia continental land warrants to enter lands in said district, and directing the principal surveyor of said district to survey the same and return his survey and plat thereof to the General Land Office for patents, as was formerly done. From a letter signed by the Commissioner of the General Land Office, which is herewith

JOHN DONNELSON, STEPHEN HEARD, AND OTHERS—
REPRESENTATIVES OF

[To accompany Bill S. No. 54.]

JANUARY 7, 1859.

Mr. RUFFIN, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom was referred the Senate bill to revive and extend an act entitled "An act for the relief of the representatives of John Donnelson, Stephen Heard, and others," approved May 24, 1824, respectfully report :

That by the aforesaid act John Donnelson, Stephen Heard, William Downs, Joseph Martin, John Sevier, and Thomas Carr, or their heirs and representatives, respectively, were authorized to enter, under direction of the Secretary of the Treasury, 5,000 acres of land, within two years from the passage of the act, in any land office in Mississippi or Alabama, "being the amount of a grant made to them by a resolution of the legislature of the State of Georgia, in the year 1786."—(U. S. Statutes at Large, volume 6, page 313.)

On the 15th of May, 1826, this act is revived and extended for twelve months.—(*Ibid*, page 340.)

On the 19th of May, 1832, it is again extended twelve months.—(*Ibid*, page 486.) On the 23d of June, 1836, it is again revived and extended for twelve months, and the beneficiaries of the act are authorized, in addition to Mississippi and Alabama, to enter their lands in any land office in Louisiana or Arkansas.

It appears by the letter of the Commissioner of the General Land Office, hereto appended and made part of this report, that prior to the passage of this last act, 23d June, 1836, some 1,460.46 acres of land had been located and patented for the Donnelson claim, out of the 5,000 acres granted by the original act, leaving still 3,539.54 acres to be located under the act of 1836; that prior to the expiration of the twelve months' limitation of said act, application was made by the Donnelson representatives to enter certain lands, in virtue of said act, in certain townships in Mississippi, which had been withdrawn from sale prior to the passage of the said last act of 1836, to await the adjustment of the boundary line of the Chickasaw cession; and that these lands thus applied for, and having been withdrawn from

market before the passage of said last named act, the General Land Office did not and could not properly recognize the location thus made by the representatives of said Donnelson, and can only obtain relief through Congress. The committee find the original claim a just and legal one, recognized as such by four several Congresses; that it has been but partially satisfied; and they can discover no good reason why the beneficiaries of the act sought to be revived should not be permitted to locate the balance of the lands awarded to them by the State of Georgia in 1786, and confirmed to them by the United States in 1824, as authorized by the act of 1836. The committee therefore report back the bill with an amendment, and recommend that the same do pass.

GENERAL LAND OFFICE, *May 26, 1858.*

SIR: I have the honor to return herewith Senate bill No. 54, to revive an act entitled "an act for the relief of the legal representatives of John Donnelson, Stephen Heard, and others," approved May 24, 1824, received at this office in a communication signed "A. Ten Eyck, Secretary to the Committee on Public Lands," and in reply to the inquiry in Mr. T's letter, I herewith enclose a copy of a letter from this office of the 12th of July, 1856, to B. H. Sheppard, esq., giving the history and present condition of the said John Donnelson claim.

With great respect, your obedient servant,

THOS. A. HENDRICKS, *Commissioner.*

Hon. CHAS. E. STUART,

Chairman of the Com. on Public Lands, Senate United States.

GENERAL LAND OFFICE, *July 12, 1856.*

SIR: In reply to your letter of the 9th instant, asking the history and present condition of the John Donelson claim, I have to state as follows: By an act of Congress approved 24th of May, 1824, (United States Statutes at Large, volume 6, page 313,) the heirs and representatives of John Donelson were authorized to enter, within two years from the passage of the act, 5,000 acres of land at any land office in Mississippi or Alabama.

The 2d section of said act, provided that said claim should "not be located or entered on any lands, except those which may have been previously to the making of said entry, offered at public sale, nor upon any lands forfeited or relinquished to the United States." This act was revived and continued in force by an act approved May 19 1832, for twelve months from the passage of that act, (same vol. statutes, page 486), and on the 23d of June, 1836, another act was passed reviving and continuing the same in force for a like period from the passage of said act of 1836; and in addition to the states of Alabama and Mississippi, authorizing the entry of the lands at any of the land offices in Louisiana or Arkansas.

The operation of this act ceased on the 23d of June, 1837. Before the passage of the act last mentioned, $1,460\frac{44}{100}$ acres had been located and patented for the Donelson claim, leaving $3,539\frac{56}{100}$ acres to be located under said act of 1836; and prior to the expiration of said act application was made on behalf of the representatives of John Donelson to enter by virtue of said act, certain lands which were found to be situated in certain townships in Mississippi, which were not subject to sale, having been withdrawn from market prior to the passage of the aforesaid act of 1836, to await the adjustment of the boundary line of the Chickasaw cession, from an apprehension that said townships might be found to fall wholly within that cession, and not therefore be subject to entry as public lands of the United States. The lands thus applied for under the act of 1836, not being in market, having been withdrawn before the passage of said act, pursuant to instructions from this office of 27th of June, 1834, this office did not feel authorized by the terms of the law for the benefit of said representatives in recognizing their location, and relief can now only be extended by the intervention of Congress, the last beneficial act in the case having expired by limitation.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS, *Commissioner*.

B. H. SHEPPARD, Esq., *Present*.

WASHINGTON, *January 2d*, 1835.

SIR: Colonel King having mislaid my letter to him, stating the circumstances which prevented my taking advantage of the act for the benefit of Morgan Heard, and others, which was revived for one year in 1832, I beg leave to mention them for your consideration as chairman of the committee to which the bill reviving the same act again has been referred.

It was not in the power of either my brother or myself, who were entitled jointly under the provisions of that act to 500 acres, to visit the country in which the entry was authorized to be made. We therefore sent to General Coffee the papers setting forth our claim and empowered him to act for us. Knowing that he was interested in a claim to about the same amount of land, derived from the same source, we had every assurance that he would execute the agency we had confided to him; but he was unfortunately prevented by sickness from attending to it, and before we had notice of his inability there was not time for the appointment of another agent within the twelve months which limited the revival of the law.

Under such circumstances, as the consideration on which that law was passed was deemed just and equitable, I trust that there can be no objection to the revival of the law for another year, so as to enable my brother and myself to secure its benefits. When it is recollected that the value of its provisions has been greatly decreased since its first passage in consequence of most of the good lands which it subjected to entry having long since been entered, it will be seen that

we could have had no motive in not taking advantage of it within the earliest possible time.

As there may be other representatives who may not have had notice of the existence of the law, or from similar causes may not have been able to take advantage of it, it was thought that the law had better be generally revived.

Your obedient servant,

A. J. DONELSON.

JAMES HUBBERT AND ANDREW HANNA.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. RUFFIN, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of James Hubbert and Andrew Hanna, of the State of Mississippi, praying for authority to purchase certain lands from the United States, have had the same under consideration, and report:

The petitioners represent that they reside in the county of Attala in the State of Mississippi, and that they are the undisturbed occupants of certain lands situated in said county of Attala, that is to say, James Hubbert is the occupant of the west half of the north-east quarter of section five in township fifteen and range nine east, and Andrew Hanna is the occupant of the southwest quarter and west half of southeast quarter of section five, and west half of section eight, all in township fifteen north of range nine east. The petitioners further represent that said lands were originally entered and subsequently conveyed in the following manner, that is to say: One Sylvester Peal, about the year 1836, entered said lands at the land office in Columbus, Mississippi; that said Peal afterwards assigned his certificate of entry of the same to Gordon D. Boyd, the receiver of public moneys at the said land office in Columbus; that afterwards, say about the 30th of September, 1839, said lands were sold at marshal's sale, under an execution against said Boyd, and in favor of the United States, at which sale one John Copeland became the purchaser, and executed his promissory note or bond (probably with security) to secure the payment of the purchase money due upon said lands in consequence of said marshal's sale; that afterwards suit was brought in the district or circuit court of the United States at Pontotoc, in the northern district of Mississippi, against said Copeland, on his said note or bond, which said suit was successfully resisted by said Copeland, as petitioners are advised and believe. Petitioners further represent that said Copeland has long since abandoned the possession of and all claims to said lands, and has ceased for many years to concern himself about the same, and has removed to the State of Texas, where he has for many years resided, asserting no claim to any of said above described lands. They

further represent that they are in quiet possession of said lands, and that no opposition is manifested thereto, nor any adverse claim asserted from any quarter. With this statement of facts the petitioners ask Congress to pass an act for their relief, by which, upon the payment of the price demanded by the government for lands subject to private entry, they may become possessed of such title as is in the government of the United States, or is in its power lawfully to confer.

The petitioners have filed no proof of the facts set forth in their petition; but, granting all the facts set forth in their application to be true, and that they occurred as therein stated in every respect, even then it does not appear to your committee that it would be expedient for Congress to grant the relief asked for. This will be made apparent by a letter from the Commissioner of the General Land Office, herewith submitted and made part of this report. Your committee therefore ask to be discharged from the further consideration of the petition.

GENERAL LAND OFFICE, *May* 21, 1858.

SIR: I have the honor to return you the petition of James Hubbert and Andrew Hanna, filed by you in this office, and to reply to your letter of the 18th instant by stating that the class of cases referred to in that petition are not, in the judgment of this office, subjects for legislation. The lands of this class were sold in good faith and paid for, and were afterwards seized as the property of the assignee and sold at public sale by the United States marshal to satisfy a judgment in favor of the United States against said assignee, but the purchasers refused to pay for their purchases. It is not deemed within the province of this office, nor of the legislature, to set aside a valid entry or sale, and issue, or order to be issued, patents to parties not known in any stage of the proceedings. If the marshal's sale, the terms of which have not been complied with, may be declared void, and the lands may be again levied on and re-sold, this duty will devolve upon another officer of the government, viz: the Solicitor of the Treasury.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS, *Commissioner.*

Hon. THOMAS RUFFIN,

House of Representatives.

LOTT HALL—HEIRS OF.

[To accompany Bill H. R. 790.]

JANUARY 14, 1859.

Mr. DAVIS, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Lott Hall, deceased, report:

That they have carefully examined the documentary evidence in the case herewith submitted, and they concur in the opinion of several committees to whom the petition has heretofore been referred, that the prayer of the petitioners ought to be granted.

The evidence shows that in May, 1776, at the solicitation of an agent of South Carolina, Lieutenant Elijah F. Payne, of the ship *Randolph*, acting under the recommendation of Congress and the directions of General Washington, entered the service of the United States as a lieutenant of marines, under the said Payne, at that time seeking recruits for the ship *Randolph*, then lying at Charleston, South Carolina, under the command of Robert Cochran, fitted out by South Carolina as one of her proportion of their continental navy, pursuant to the recommendations of the then Congress of the United States. He enlisted twenty-nine men and a boy in Massachusetts, whom he transferred to Providence, Rhode Island, and there placed them, as well as himself, under the command of Lieutenant Payne. Having procured in Providence a vessel and munitions and provisions to transport said officers and crews to Charleston, they sailed for that port in the month of June, to go on board the *Randolph*. On their passage they took four prizes, the last of which Hall was placed on board of as prize-master, with orders to take the prize to Boston; but she was retaken by a British vessel, and Hall was carried a prisoner to Glasgow, in Scotland, where he was detained about a year, when he was discharged, destitute of the means of returning home. After several months he obtained a passage to the West Indies, from thence to Virginia, but was again taken prisoner, his ship having been captured by the British "within the Capes." Through the interposition of Patrick Henry, then governor of Virginia, he was exchanged, and by him furnished with money sufficient to reach Philadelphia, where Congress was then in session. He made petition to Congress,

recounting his sufferings, and concluding in the following language: "I now beg of your honors to consider my sufferings, and if you think me deserving any office on board a continental vessel, and will bestow it upon me, I am willing to enter the service a second time, or at least I hope your honors will supply me with money sufficient to carry me to the *State* of Boston, the State of my nativity."

He reached his home in Massachusetts February 22, 1778, a period of one year nine months and twenty-two days from the time he embarked in the service of his country as a lieutenant of marines. The first three prizes taken were condemned and sold, and the proceeds, £6,210, paid over to the State of South Carolina. In 1790, Congress passed an act providing for Commissioners to audit and report upon all the claims of the individual States against the United States for expenses and disbursements during the war. Under this statute the Commissioners reported a settlement with South Carolina and a *balance* in her favor of \$1,205,978. On the 14th of February, 1794, the delegation from South Carolina applied to Congress to have returned to South Carolina the original vouchers of the settlement which had been left in the Treasury Department. It does not appear that the vouchers were ever taken from the department, and they were probably destroyed by fire at Washington. They cannot now be found, but the petitioners claim, and the committee believe it to be a fair conclusion from the testimony, that in adjusting and settling this "*balance*," the United States had the benefit of the £6,210 which South Carolina had received from the above prizes. The evidence for the most part is printed in Doc. No. 58 of the 1st session of the 26th Congress, to which the committee refer.

Upon this statement of facts the claimants ask for the pay and subsistence of said Hall while a prisoner, for one year's pay as a supernumerary exchanged officer, and for his share of the prize money, with such interest as Congress may deem just and right.

This claim, growing out of our revolutionary contest, like all others arising from the same source, is liable to the objection of the lapse of time since it arose; but, fortunately, there is no statute of limitations to check the justice of a nation, and no principle to stint its gratitude; time only may afford a presumption of payment, but when that presumption is overcome by satisfactory proof, it only gives an additional reason for the speedy liquidation of a just claim.

That the services were performed and the sufferings endured, as alleged in the petition, is proved to the satisfaction of the committee; that no remuneration has been received is shown by the fact that Hall was taken prisoner on the first voyage, and by his petitions in 1778, and again in 1808. And as he died shortly after the presentation of the last petition, leaving a family of young children, this affords a satisfactory reason why the claim was not further prosecuted until after the passage of the late act granting five years' pension to certain widows; when, as stated in the affidavit of one of the sons of said Hall, in hunting up evidence to obtain his mother's pension, he discovered the present claim as made to Congress by his father. The widow obtained the pension as the widow of a deceased revolutionary

officer, and she and her children now, as soon as they have become acquainted with their rights, revive the claim originally made; and the services and sufferings in the revolution having been proved, and the lapse of time accounted for, the question as to the amount which the petitioners are entitled to remains to be determined. From the time said Hall first embarked in the service of his country as a lieutenant, May 1, 1776, to the time of his return home from captivity, February 22, 1778, is one year nine months and twenty-two days, which, at \$20 per month, the pay of a lieutenant of marines as fixed by Congress, amounts to \$434 10. By the resolution of Congress of July 25, 1777, lieutenants are allowed four dollars a week for subsistence, when they are unable to live on board their vessels. If this, from analogy, be assumed as a reasonable compensation for his subsistence from the time he was taken prisoner, September 13, 1776, till his return home, being seventy-five weeks and two days, it would amount to \$301 14.

The claim set up for interest is not allowed, nor is that for one year's pay after his return, as Lieutenant Hall was not an *exchanged continental supernumerary* officer, within the meaning of the resolutions of Congress. It appears by the evidence that £6,210 was paid to the State of South Carolina for prize money, for the four prizes which Lieutenant Hall assisted in taking; and as it is presumed (for the evidence was destroyed by fire) that in her settlement with the general government, South Carolina credited the government with that amount, the government is liable to the representatives of Lieutenant Hall for his share, whatever the same may be.

The committee report the accompanying bill.

DANIEL DAVIS.

[To accompany Bill H. R. 791.]

JANUARY 14, 1859.

Mr. FENTON, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the memorial of Daniel Davis, report:

That they have had the same under consideration, and find from the evidence submitted, that the said Daniel Davis was a teamster in Captain Farrow's company of teamsters, under the command of quartermaster John Matthews. That he entered the service of the quartermaster on or about the 20th day of May, 1795, for the term of three months, and continued in the service for that period of time, when he was honorably discharged by the quartermaster at Greenville. Whilst in the service he was engaged in hauling supplies from Fort Hamilton to Fort Greenville, which was then the headquarters of General Wayne. The discharge of Daniel Davis is lost. But Sylvanus Olney and Lucena Mann testify under oath that they knew Davis at the time he was in the service. They had very often seen him performing duty as a soldier and teamster. The witnesses are certified to be credible persons. The records containing the names of those who performed service during Wayne's war, are notoriously imperfect. But your committee believe that the evidence accompanying the memorial is amply sufficient to justify them in reporting a bill granting him one hundred and sixty acres of land. They, therefore, report such a bill.

FREDERICK STEPHENS.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. BONHAM, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the bill for the relief of Frederick Stephens, report:

That they have had the same under consideration, and ask to be discharged from the further consideration thereof; and that the applicant have leave to withdraw the original papers in the case, leaving a copy of each on file in the proper office.

THE LAND OFFICE

Presented to the House of Commons by Command of Her Majesty

in the year 1880. Printed by the Stationery Office, London.

REPORT

OF THE COMMISSIONER OF THE GENERAL LAND OFFICE
FOR THE YEAR 1880.
IN WHICH ARE GIVEN THE RESULTS OF THE SURVEYS
MADE DURING THE YEAR, AND THE STATE OF THE LANDS
UNDER THE CONTROL OF THE OFFICE.

J. W. BROWN.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. BONHAM, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of J. W. Brown, proposing to sell to the government of the United States, his patent for the manufacture of arms, for the sum of fifty thousand dollars, report:

That they have had the same under consideration, and asked to be discharged from the further consideration thereof.

LANDS

IN THE STATE OF NEW YORK

AS COMMISSIONER, JOHN H. WATSON, JR.

REPORT

TO THE SENATE AND ASSEMBLY OF THE STATE OF NEW YORK
IN SENATE, JANUARY 15, 1885.

ALBANY: J. B. LIPPINCOTT & CO., PRINTERS, 1885.

JOSÉ MARIA VALDEZ.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. BONHAM, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of José Maria Valdez, report :

That the petition of José Maria Valdez is for losses sustained at the hands of the Mexicans and Pueblo Indians, during the insurrection of Taos, New Mexico, in 1847.

The grounds on which the indemnity for the losses is rested by petitioner are that the depredations were committed in consequence of petitioner's having been in the employment of the government of the United States, under Major Gilpin, on a campaign against the Navajo Indians in November, 1846, and thenceforward upheld the government of the United States.

Your committee are of opinion that the facts are insufficient to warrant any indemnity by Congress, and know of no similar case in which indemnity has been made.

The committee therefore asked to be discharged from its further consideration.

JOSE MARIA VALDES

Witnessed and attested at the City of New Mexico, January 14, 1909.

Attest, from the Committee on Military Affairs, made the following

REPORT

The Committee on Military Affairs, to whom was referred the petition of Jose Maria Valdes, report:

That the petition of Jose Maria Valdes is for the restoration of the lands of the Mexicans and Pueblo Indians, during the occupation of New Mexico, in 1847.

The grounds on which the indemnity for the loss is claimed by the petitioner are that the depredations were committed in consequence of a policy of having been in the employment of the Government of the United States, under Major (Philip), on a campaign against the Navajo Indians in November, 1846, and the northwestern part of the Government of the United States.

Your committee are of opinion that the facts are insufficient to warrant any indemnity by Congress, and know of no similar case in which indemnity has been made.

The committee therefore asked to be discharged from its further consideration.

JAMES VAUGHN.

[To accompany Bill H. R. No. 793.]

JANUARY 14, 1859.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of James Vaughn, respectfully report :

That from the evidence and facts presented with the memorial and obtained from the Auditor's office, it appears that James Vaughn was a first lieutenant in Captain Gillespie's company of Tennessee volunteers ; that he resigned said appointment on November 7, 1846, upon his being made an assistant quartermaster ; that on November 19, 1846, he was, by order of that date signed by Colonel J. E. Thomas, the commandant of the Tennessee regiment of cavalry, and which regiment he was attached to, and subject to the orders of the said Colonel Thomas, superseded as assistant quartermaster by Captain N. Adams, and directed to "proceed to turn over all the quartermaster's property in his hands to Captain N. Adams, who has been assigned to do duty as quartermaster to the Tennessee regiment of cavalry, and Lieutenant Vaughn will close all the unfinished business in his hands as soon as practicable," which occupied him in the settlement of his accounts as assistant quartermaster until March 9, 1847, at which time he was commissioned as a quartermaster, with the rank of captain, in Captain Gillespie's company.

The committee are of opinion that, in view of the fact of the said Lieutenant James Vaughn having received no pay or emoluments for his services during the time he was settling his accounts as assistant quartermaster, in conformity to the order of his superior and commanding officer, Colonel Thomas, to wit: from November 19, 1846, to March 9, 1847, he is clearly entitled to pay for that period, as a first lieutenant, at the rate of one hundred and fifteen dollars per month ; and your committee report a bill for his relief and recommend its passage.

JAMES VAUGHN.

(To be printed by J. H. P. 1846.)

JANUARY 14, 1850.

THE SECRETARY, HOUSE OF COMMONS, MILITARY AFFAIRS, AND THE
FOLLOWING

REPORT.

THE COMMISSIONERS OF MILITARY AFFAIRS, TO WHOM WAS REFERRED THE MATTER
BY AN ACT OF PARLIAMENT, PASSED IN 1845.

That from the evidence and facts presented with the memorial and
obtained from the Auditor's office, it appears that James Vaughn was
first appointed to the position of Assistant Quartermaster in the
25th Regiment of Foot, on the 1st of November 1840, upon
the order made by the Adjutant-General, dated on November 10,
1840, by order of that date signed by Colonel A. M. Thomas,
Commandant of the 25th Regiment of Foot, and which
was attached to, and subject to the order of the said
Colonel Thomas, signified as Assistant Quartermaster by Captain N.
Adams, and directed to "proceed to take over all the duties of the
Assistant Quartermaster in his hands to Captain N. Adams, who has been assigned
to the duty of Assistant Quartermaster to the 25th Regiment of Foot, and
to the duty of Assistant Quartermaster in his hands to the said
Colonel Thomas, which occupied him in the settlement of his
accounts as Assistant Quartermaster until March 9, 1841, at which
time he was commissioned as a Quartermaster, with the rank of Captain,
in the 25th Regiment of Foot.

The Commission are of opinion that in view of the fact of the said
Colonel Thomas having received no pay or emoluments for
his services during the time he was acting as Assistant
Quartermaster, in conformity to the order of his superior and com-
manding officer, Colonel Thomas, to wit: from November 10, 1840,
to March 9, 1841, he is clearly entitled to pay for that period, as a
Quartermaster, at the rate of one hundred and fifteen dollars per
month; and your Commission report a bill for his salary and travelling
expenses.

JOSHUA FISH.

[To accompany Bill H. R. No. 794.]

JANUARY 14, 1859.

Mr. STANTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Joshua Fish, respectfully report:

That the petitioner entered the service of the United States as a private in Captain Sutton's company of Lieutenant Colonel Bloom's regiment of New York militia, which was called into the service on the Niagara frontier in the war of 1812, for six months, as a substitute for Chester Colhomer, and served within a few days of six months.

Either from the fact of his entering the service as a substitute, or from some other cause, his name does not appear on the rolls of the company or regiment.

He was appointed a fife major soon after he entered the service, and acted in that capacity until a few days before the expiration of his term, when, by a consolidation of several regiments, of which Colonel Bloom's was one, his services were no longer required in that capacity and he had leave of absence for the residue of his term.

The proofs satisfy the committee beyond any doubt that the petitioner served as stated in his petition, but in consequence, as your committee suppose, of his entering the service as a substitute, and not being present when the troops belonging to his regiment were mustered out of the service, his name does not appear upon the muster roll of the regiment.

In consequence of this omission, and the rules of the Third Auditor's Office and the Pension Office in such cases requiring the positive evidence of two witnesses to his service for the full term claimed, he has not been able to make the proof necessary to entitle him to his pay and bounty land from the proper offices without the interposition of Congress. The committee therefore report a bill for his relief.

REPORT OF THE
COMMISSIONER OF THE
LAND OFFICE

FOR THE YEAR
1881

IN RESPONSE TO A
RESOLUTION OF THE
LEGISLATURE

PASSED AT THE
ANNUAL SESSION
OF 1880

ALBANY:
J. B. LEECH, PRINTER,
1881

The following is a list of the
lands which have been
conveyed to the State
during the year 1881.

No.	Name of Land	Acres
1	Tract of land in the town of Albany, containing 100 acres	100
2	Tract of land in the town of Albany, containing 50 acres	50
3	Tract of land in the town of Albany, containing 25 acres	25
4	Tract of land in the town of Albany, containing 10 acres	10
5	Tract of land in the town of Albany, containing 5 acres	5
6	Tract of land in the town of Albany, containing 2 acres	2
7	Tract of land in the town of Albany, containing 1 acre	1
8	Tract of land in the town of Albany, containing 1/2 acre	1/2
9	Tract of land in the town of Albany, containing 1/4 acre	1/4
10	Tract of land in the town of Albany, containing 1/8 acre	1/8
11	Tract of land in the town of Albany, containing 1/16 acre	1/16
12	Tract of land in the town of Albany, containing 1/32 acre	1/32
13	Tract of land in the town of Albany, containing 1/64 acre	1/64
14	Tract of land in the town of Albany, containing 1/128 acre	1/128
15	Tract of land in the town of Albany, containing 1/256 acre	1/256
16	Tract of land in the town of Albany, containing 1/512 acre	1/512
17	Tract of land in the town of Albany, containing 1/1024 acre	1/1024
18	Tract of land in the town of Albany, containing 1/2048 acre	1/2048
19	Tract of land in the town of Albany, containing 1/4096 acre	1/4096
20	Tract of land in the town of Albany, containing 1/8192 acre	1/8192
21	Tract of land in the town of Albany, containing 1/16384 acre	1/16384
22	Tract of land in the town of Albany, containing 1/32768 acre	1/32768
23	Tract of land in the town of Albany, containing 1/65536 acre	1/65536
24	Tract of land in the town of Albany, containing 1/131072 acre	1/131072
25	Tract of land in the town of Albany, containing 1/262144 acre	1/262144
26	Tract of land in the town of Albany, containing 1/524288 acre	1/524288
27	Tract of land in the town of Albany, containing 1/1048576 acre	1/1048576
28	Tract of land in the town of Albany, containing 1/2097152 acre	1/2097152
29	Tract of land in the town of Albany, containing 1/4194304 acre	1/4194304
30	Tract of land in the town of Albany, containing 1/8388608 acre	1/8388608
31	Tract of land in the town of Albany, containing 1/16777216 acre	1/16777216
32	Tract of land in the town of Albany, containing 1/33554432 acre	1/33554432
33	Tract of land in the town of Albany, containing 1/67108864 acre	1/67108864
34	Tract of land in the town of Albany, containing 1/134217728 acre	1/134217728
35	Tract of land in the town of Albany, containing 1/268435456 acre	1/268435456
36	Tract of land in the town of Albany, containing 1/536870912 acre	1/536870912
37	Tract of land in the town of Albany, containing 1/1073741824 acre	1/1073741824
38	Tract of land in the town of Albany, containing 1/2147483648 acre	1/2147483648
39	Tract of land in the town of Albany, containing 1/4294967296 acre	1/4294967296
40	Tract of land in the town of Albany, containing 1/8589934592 acre	1/8589934592
41	Tract of land in the town of Albany, containing 1/17179869184 acre	1/17179869184
42	Tract of land in the town of Albany, containing 1/34359738368 acre	1/34359738368
43	Tract of land in the town of Albany, containing 1/68719476736 acre	1/68719476736
44	Tract of land in the town of Albany, containing 1/137438953472 acre	1/137438953472
45	Tract of land in the town of Albany, containing 1/274877906944 acre	1/274877906944
46	Tract of land in the town of Albany, containing 1/549755813888 acre	1/549755813888
47	Tract of land in the town of Albany, containing 1/1099511627776 acre	1/1099511627776
48	Tract of land in the town of Albany, containing 1/2199023255552 acre	1/2199023255552
49	Tract of land in the town of Albany, containing 1/4398046511104 acre	1/4398046511104
50	Tract of land in the town of Albany, containing 1/8796093022208 acre	1/8796093022208
51	Tract of land in the town of Albany, containing 1/17592186044416 acre	1/17592186044416
52	Tract of land in the town of Albany, containing 1/35184372088832 acre	1/35184372088832
53	Tract of land in the town of Albany, containing 1/70368744177664 acre	1/70368744177664
54	Tract of land in the town of Albany, containing 1/140737488355328 acre	1/140737488355328
55	Tract of land in the town of Albany, containing 1/281474976710656 acre	1/281474976710656
56	Tract of land in the town of Albany, containing 1/562949953421312 acre	1/562949953421312
57	Tract of land in the town of Albany, containing 1/1125899906842624 acre	1/1125899906842624
58	Tract of land in the town of Albany, containing 1/2251799813685248 acre	1/2251799813685248
59	Tract of land in the town of Albany, containing 1/4503599627370496 acre	1/4503599627370496
60	Tract of land in the town of Albany, containing 1/9007199254740992 acre	1/9007199254740992
61	Tract of land in the town of Albany, containing 1/18014398509481984 acre	1/18014398509481984
62	Tract of land in the town of Albany, containing 1/36028797018963968 acre	1/36028797018963968
63	Tract of land in the town of Albany, containing 1/72057594037927936 acre	1/72057594037927936
64	Tract of land in the town of Albany, containing 1/144115188075855872 acre	1/144115188075855872
65	Tract of land in the town of Albany, containing 1/288230376151711744 acre	1/288230376151711744
66	Tract of land in the town of Albany, containing 1/576460752303423488 acre	1/576460752303423488
67	Tract of land in the town of Albany, containing 1/1152921504606846976 acre	1/1152921504606846976
68	Tract of land in the town of Albany, containing 1/2305843009213693952 acre	1/2305843009213693952
69	Tract of land in the town of Albany, containing 1/4611686018427387904 acre	1/4611686018427387904
70	Tract of land in the town of Albany, containing 1/9223372036854775808 acre	1/9223372036854775808
71	Tract of land in the town of Albany, containing 1/18446744073709551616 acre	1/18446744073709551616
72	Tract of land in the town of Albany, containing 1/36893488147419103232 acre	1/36893488147419103232
73	Tract of land in the town of Albany, containing 1/73786976294838206464 acre	1/73786976294838206464
74	Tract of land in the town of Albany, containing 1/147573952589676412928 acre	1/147573952589676412928
75	Tract of land in the town of Albany, containing 1/295147905179352825856 acre	1/295147905179352825856
76	Tract of land in the town of Albany, containing 1/590295810358705651712 acre	1/590295810358705651712
77	Tract of land in the town of Albany, containing 1/1180591620717411303424 acre	1/1180591620717411303424
78	Tract of land in the town of Albany, containing 1/2361183241434822606848 acre	1/2361183241434822606848
79	Tract of land in the town of Albany, containing 1/4722366482869645213696 acre	1/4722366482869645213696
80	Tract of land in the town of Albany, containing 1/9444732965739290427392 acre	1/9444732965739290427392
81	Tract of land in the town of Albany, containing 1/18889465931478580854784 acre	1/18889465931478580854784
82	Tract of land in the town of Albany, containing 1/37778931862957161709568 acre	1/37778931862957161709568
83	Tract of land in the town of Albany, containing 1/75557863725914323419136 acre	1/75557863725914323419136
84	Tract of land in the town of Albany, containing 1/151115727451828646838272 acre	1/151115727451828646838272
85	Tract of land in the town of Albany, containing 1/302231454903657293676544 acre	1/302231454903657293676544
86	Tract of land in the town of Albany, containing 1/604462909807314587353088 acre	1/604462909807314587353088
87	Tract of land in the town of Albany, containing 1/1208925819614629174706176 acre	1/1208925819614629174706176
88	Tract of land in the town of Albany, containing 1/2417851639229258349412352 acre	1/2417851639229258349412352
89	Tract of land in the town of Albany, containing 1/4835703278458516698824704 acre	1/4835703278458516698824704
90	Tract of land in the town of Albany, containing 1/9671406556917033397649408 acre	1/9671406556917033397649408
91	Tract of land in the town of Albany, containing 1/19342813113834066795298816 acre	1/19342813113834066795298816
92	Tract of land in the town of Albany, containing 1/38685626227668133590597632 acre	1/38685626227668133590597632
93	Tract of land in the town of Albany, containing 1/77371252455336267181195264 acre	1/77371252455336267181195264
94	Tract of land in the town of Albany, containing 1/154742504910672534362390528 acre	1/154742504910672534362390528
95	Tract of land in the town of Albany, containing 1/309485009821345068724781056 acre	1/309485009821345068724781056
96	Tract of land in the town of Albany, containing 1/618970019642690137449562112 acre	1/618970019642690137449562112
97	Tract of land in the town of Albany, containing 1/1237940039285380274899124224 acre	1/1237940039285380274899124224
98	Tract of land in the town of Albany, containing 1/2475880078570760549798248448 acre	1/2475880078570760549798248448
99	Tract of land in the town of Albany, containing 1/4951760157141521099596496896 acre	1/4951760157141521099596496896
100	Tract of land in the town of Albany, containing 1/9903520314283042199192993792 acre	1/9903520314283042199192993792

ALBANY, N. Y.,
JANUARY 1, 1882.

FORTRESS MONROE.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

MR. STANTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom were referred sundry papers from the War Department in relation to the purchase of land adjacent to Fortress Monroe, now report:

That they have had the same under consideration, and upon examination of a very voluminous correspondence, and army orders and reports, and arguments, &c., &c., they find that much controversy has existed for some years past between the officers in command at Fortress Monroe and the owners of a tract of land lying adjacent to it, formerly owned by Mr. French, and now owned by Mr. Anderson of Richmond.

To enable the House to understand the nature and grounds of the controversy it is proper to say, that Fortress Monroe is situated on a long narrow peninsula formed by the waters of Chesapeake Bay on one side, and of a stream called Mill creek on the other. At or near the mouth of Mill creek there is a large surface that is covered with water at high tide, but above the water at low tide.

The grounds belonging to the United States upon which the fortress is situated is an elevated strip of high, clay, timbered land only a few rods wide at any point, of irregular width, and almost a semi-circle in shape, containing two hundred and fifty-two acres, and furnishing a range for target practice of some two miles along the beach on the Chesapeake Bay side of the grounds.

The site of Fortress Monroe has always been regarded as important for national defence, and was occupied by a fort prior to the revolution.

On the 1st of March, 1821, the legislature of Virginia passed an act ceding to the United States two hundred and fifty acres of land to be taken from the point at the junction of Mill creek and Chesapeake Bay, and running in towards the main land for quantity; but, providing that the act should not authorize the discontinuance "of the present road to the fort." The United States previously owned two acres upon which the light house was situated.

The act provided that the governor should execute a deed conveying the title and jurisdiction to the United States.

In pursuance to this act the United States extended their improvements and exercised jurisdiction over the ceded premises until 1838, without any deed from the governor.

About this time some question of jurisdiction arose, which made it necessary to have the governor's deed or patent. The officer in charge of the fortress was required to have a survey of the premises by the surveyor of Elizabeth City county, Virginia, for the purpose of furnishing the governor a description of the premises to be conveyed. This was done, and the officer directed the survey to be made by metes and bounds, and described by metes and bounds round the entire premises, intending that the line should correspond as near as practicable with high water mark on the shores of Mill creek and Chesapeake Bay.

His object in doing this undoubtedly was to get a larger quantity of land and run further inland on the peninsula than he would have done by calling for the shore or stream as the boundary, and only running a single line across the peninsula.

His letter to the governor of Virginia shows, that he supposed that a deed for the land to high water mark, or to metes and bounds that he considered equivalent to it, would pass the shore between high and low water mark. The attorney general of Virginia expressed a different opinion. The deed however was executed by the governor of Virginia, describing the premises by metes and bounds according to the survey made under the direction of the officer in command of the fortress. No monuments were ever established to mark the boundary, and the shore on both sides was treated by the United States as the boundary.

The road was reserved in the deed in the terms of the reservation in the act of cession.

In 1851 James S. French located a Virginia treasury warrant upon the land between high and low water mark, covering the shore round the reservation and excluding the United States from the water. It was claimed by Mr. French as waste land, which was subject to entry and appropriation at two dollars per hundred acres. By the same entry Mr. French had the undisputed title and possession of another tract of 168 acres adjoining the reservation on the side next the mainland and running from the bay to Mill creek, and separating the lands of the United States from the upper portion of the peninsula and the mainland.

In 1852 Mr. French brought an action of ejectment against General Bankhead, the officer in command of Fortress Monroe, to recover the land between high and low water mark.

This suit was finally tried on error in the Virginia high court of appeals against Mr. French in 1854.

The committee do not deem it necessary to inquire into the correctness of that decision, as the question was clearly one that must be decided by the laws of Virginia, and in such a question the decision of the courts of Virginia must necessarily be sovereign and supreme.

About the time of the decision of this case Mr. French filed his bill in chancery in the court of Elizabeth City county, praying an

injunction to restrain the officer in command of Fortress Monroe from firing artillery over his premises or along the road leading from the fortress to his premises.

It was claimed by Mr. French that the road running along the beach on the shore of the bay from the mainland to the fortress, was the one reserved in the act of the Virginia legislature and the deed of cession, and that firing cannon along it was an interruption or obstruction of the road in violation of the deed of cession. This the officers of the fort denied, and insisted that the road reserved was one which passed along the ridge and crossed Mill creek by a bridge at the upper line and corner of the land ceded to the United States.

A provisional injunction was allowed, on the filing of the bill, to restrain the officers of the United States from firing over Mr. French's premises or in the direction of his house so as to endanger the safety of his family or property.

The bill was dismissed by the plaintiff before a final hearing was had, so that there has never been a decision of the question as to the reservation of the road along the beach or the right of the United States to use it as a range for artillery practice.

In point of fact it always has been and still is so used.

From the time these controversies commenced Mr. French has always been urging the War Department to purchase his premises for the purpose of giving a longer range for artillery practice.

At the time of the passage of the act of cession there had been no land appropriated on the peninsula nearer the fort than the Buckroe farm or estate, which was some 150 to 200 rods northwardly from the northerly or back line of the government lot as it was afterwards laid out. In 1828 an additional lot of $18\frac{3}{4}$ acres was located by a Mr. Shelton adjoining the Buckroe farm on the south and running southwardly in the direction of the fort.

This still left 26 acres between Mr. Shelton and the land ceded to the United States, which remained vacant until it was covered by Mr. French's warrant in 1851 as part of the same entry that covered the shore of Mill creek between high and low water mark. But as this part of his entry was clearly subject to entry and did not conflict with the grant to the United States, his title to this was not affected by the decision of the court in his suit against General Bankhead.

But the fact that this tract had lain so long vacant, and that Mr. French in making his entry covered the shore between high and low water mark, which he must have known was indispensable to the use and occupancy of Fortress Monroe, and that he immediately on the receipt of his patent commenced an action to recover the possession of it, look very much as if the purchase of the property had originated in the desire to make a speculation by selling it to the United States.

Mr. French brought a lawsuit with the United States, and it has turned out to be a bad investment. He now comes to Congress and asks us to buy him out at an enormous price. For it is worthy of remark, that the correspondence shows a much greater anxiety on

the part of the owners to sell their land than on the part of the United States, or the officer in charge of the fortress, to buy it.

And one of the reasons given by Mr. Anderson why the government should buy it at \$20,000 is, that it has already cost the United States that sum in lawyers' fees and expenses of litigation. But the motives of Mr. French in making the purchase have nothing to do with the necessities of the service.

If it is necessary for the public service, and can be had for a reasonable price, it ought to be purchased. The Secretary of War recommends the purchase in his annual message. His opinion, however, must of necessity be based upon the representations and opinions of the officers in charge of the fortress and those who have made special examinations of the subject. These representations and opinions are before the committee.

There is a general concurrence amongst the officers who have been charged with these examinations, that it would be convenient to have this tract of Mr. French, but they do not think there would be any material advantage in it without the Buckroe farm could also be procured. For it seems that Mr. French purchased the Shelton lot of $18\frac{3}{4}$ acres, which he proposes to include in the sale to the United States, but the Buckroe estate does not seem to be in the market. The owners have made no proposition to sell, nor have the United States made any proposition to buy.

The reason given by the officers for not considering Mr. French's property as of much importance is, that it would not give sufficient room for long range artillery practice on land. That they now have abundant room for long range practice on water, and sufficient for short range practice on land within the limits of the grounds now owned by the United States.

On the 10th of February, 1855, a board of officers was organized by the Secretary of War, consisting of Brevet Colonel J. S. Smith, Major A. Mordecai, and Captain J. M. Barman, who were ordered to proceed to Fortress Monroe and make a personal examination of the grounds, and report upon the propriety and necessity of purchasing Mr. French's land. On the 16th of March, 1855, they made the examination and report. They all say that the possession of a portion of the Buckroe farm is indispensable to give a sufficient range for long range artillery practice on land. Major Mordecai and Captain Barman say that "some advantage would result from the possession of Mr. French's lower tract, as it would increase the range from the fort to about two miles." Colonel Smith says he is opposed to any further purchase unless enough can be had to furnish a range of four miles for long range practice.

All the officers who have given any opinion as to the value of the land give \$5,000 as the very outside limit that the government ought to go. Mr. French offered it at \$10,000; Mr. Anderson, the present owner, asks \$20,000. He produces letters from gentlemen who put a fancy value upon it as a site for a summer retreat and residence, when large profits might be made by keeping a hotel and selling lots, &c., &c.

A hotel company has been incorporated by the legislature of Virginia for the purpose of building an extensive hotel on the premises. Mr. French says he has spent some \$5,000 in improvements. The officer in charge of the fort says from the best information he can get, Mr. French's improvements cost about \$2,700. That they were left uncompleted and unfinished, and have been abandoned and dilapidated, and are now wholly worthless.

It seems to be generally agreed that any further purchase of adjacent land is altogether unnecessary, unless the United States can have the absolute control of the road along the beach, and the adjacent shores that are used as fisheries.

If this road is a public highway the purchase of adjacent lands over which it passes would give no right to interrupt travel upon it, and the United States might still be annoyed by injunctions to restrain the officers from using the beach as a range for artillery practice.

It is a source of gratification, however, that during the thirty-eight years that this ground has been used for this purpose, the papers referred to the committee do not show that any accident has ever happened, or that the slightest injury has ever been done to the person or property of any citizen.

This would indicate either that the officers have always been very careful or that the danger is greatly overrated.

The committee are not aware that it has ever before been claimed at any other military post, that it was necessary for the United States to own the land for four or five miles and depopulate a whole neighborhood for the purpose of furnishing a range for artillery practice.

Nor do they believe that the damage to life and property would be essentially diminished by such an acquisition of territory.

It would still be used by persons in the neighborhood quite as freely, and perhaps more so by the public at large, if the title and control was in the United States as if it was in an individual or in the State of Virginia.

The only difference would be that if a citizen should be killed we should have the satisfaction of knowing that he was killed on our own grounds and not on the grounds of a private individual. But neither the moral or legal qualities of the act would be essentially changed.

If the killing was malicious or from want of proper care, the officer would be subject to the same penalties as if it happened upon the grounds of a citizen. The committee is therefore of opinion that the necessities of the service do not require any further purchase of land at Fortress Monroe, and therefore ask to be discharged from the further consideration of the subject.

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If the killing was malicious or from want of proper care, the officer would be subject to the same penalties as if it happened upon the grounds of a citizen. The committee is therefore of opinion that the necessities of the service do not require any further purchase of land at Fortress Monroe, and therefore ask to be discharged from the further consideration of the subject.

REPORT OF THE COMMISSIONER OF PLANT INDUSTRY
FOR THE YEAR 1907

Presented to the Senate and House of Representatives
at their respective sessions, January 14, 1908

REPORT

The Department of Agriculture, in accordance with the provisions of the Act of March 3, 1879, has the honor to submit to the Senate and House of Representatives the following report for the year 1907.

The Department has the honor to acknowledge the receipt of the report of the Commissioner of Plant Industry for the year 1907, and to express its appreciation of the efforts and services of the Commissioner and his staff.

OFFICERS AND SEAMEN IN SEARCH OF DR. KANE.

[To accompany S. R. 20.]

JANUARY 14, 1859.

Mr. JOHN SHERMAN, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred S. R. 20, authorizing the Secretary of the Navy to pay additional compensation to the officers and seamen who accompanied the expedition in search of Dr. Kane, have had the same under consideration, and beg leave to report :

That your committee see no sufficient reason for the allowance asked for. The expedition of Lieutenant Hartstein was relieved from a dangerous service by the return of Dr. Kane. Its officers have been paid their regular pay, and we have no information among the papers that would enable your committee to estimate or report a further allowance.

OFFICERS AND CREWMEN IN SEARCH OF DR. KANE.

17. November 2 A. M.

January 14, 1880.

Mr. Jones, Chairman, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs is pleased to report that the Secretary of the Navy is now conducting an expedition to the coast of Alaska, and has had the honor to receive a report from the commanding officer of the expedition, dated at Sitka, Alaska, January 14, 1880.

That your committee see no sufficient reason for the allowance asked for. The expedition of Lieutenant Hartman was relieved from a dangerous service by the return of Dr. Kane. The officers have been paid their regular pay, and we have no information among the papers that would enable your committee to estimate or report a further allowance.

CHARLES W. BABBITT.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. TIMOTHY DAVIS, of Massachusetts, made the following

R E P O R T .

The Committee on Naval Affairs, to whom was referred the petition of Charles W. Babbitt for compensation for services rendered in the naval service, respectfully report:

That, in the absence of the proper accounts, they are unable to decide upon the merits of the case, and therefore ask to be discharged from the further consideration of the case.

CHARLES W. BARNETT

Presented at the meeting of the House of Representatives, January 11, 1871.

Mr. TIMOTHY DAVIS, of Massachusetts, made the following

REPORT,

The Committee on Naval Affairs, to whom was referred the petition of Charles W. Barnett for compensation for services rendered in the naval service, respectfully report:

That, in the absence of the proper accounts, they are unable to do more than open the merits of the case, and therefore ask to be referred to the proper authorities for their consideration of the case.

JOHN BUXTON, JAMES BOTNER, SPARHAWK PARSONS,
WILLIAM FLEMING, ET AL.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. TIMOTHY DAVIS, of Massachusetts, made the following

R E P O R T .

The Committee on Naval Affairs, to whom was referred the petitions of John Buxton, for bounty land on account of services on board the privateer "General Armstrong," James Botner, Sparhawk Parsons, and William Fleming and others, have had the same under consideration, and respectfully report:

That in the judgment of the committee a general bill amending the bounty land act of 1855, so as to include in its provisions men who served in private armed vessels regularly commissioned by the United States, ought to be passed by Congress.

Accordingly your committee do not deem it just or wise to legislate in special cases, and ask to be discharged from the further consideration of the prayer of the petitioners.

JOHN HOLLAND.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. FREEMAN H. MORSE, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of John Holland, have had the same under consideration and report:

That John Holland, son of William Holland, late an assistant engineer in the United States navy, asks that Congress may grant him a pension for the reason, as stated in his memorial, that his father died while in the service of the United States, and in consequence of a disease contracted while in such service. Without acknowledging that, if the facts are as stated by the memorialist, any claim for a pension exists, as there is nothing before the committee but the bare memorial, and no proof of the statements made therein, your committee report adversely thereon, and ask to be discharged from its further consideration.

That he had passed his examination, and had been assigned the rank of passed assistant surgeon, next below Passed Assistant Surgeon Ward. Dr. Hall claims the difference between the pay of an assistant surgeon and that of a passed assistant surgeon from March 3, 1852, the expiration of five years' service as assistant surgeon, is the time when he passed his examination and became a passed assistant surgeon, and difference in pay amounting to \$500 per year. This sum is claimed on the ground that he was at sea when the medical board was in session to examine candidates, and that he could not before obtain an examination, though he more than once applied for it. He was kept at sea most of the time, and in arduous service. It has been the custom of this committee to report favorably in those cases where applicants are unable to stand their examinations by reason of the nature of the government, such as absence in service, but who, upon their return, stand their examinations successfully.

Against the prayer of the memorial of Dr. Hall stands the fact that, when he was examined in 1854, two years after he was entitled to an examination, he failed to pass. Now, your committee conceive that, if upon examination in 1854 he was found to be unqualified for promotion, he was certainly much less qualified in 1852. In 1852 he was examined, passed, and assigned his rank as passed assistant surgeon April 21 of the same year. He now asks that the date of

JOHN HOLLAND

January 11, 1893.—Laid upon the table and ordered to be printed.

Mr. THOMAS H. MOORE, Chairman of the Committee on Naval Affairs, reads the following

REPORT.

The Committee on Naval Affairs to whom was referred the memorial of John Holland, have had the same under consideration and report.

That John Holland, son of William Holland, late an assistant engineer in the United States navy, asks that Congress may grant him a pension for the service he rendered in his invention, that he became blind while in the service of the United States, and in consequence of a disease contracted while in such service. With the understanding that if the facts are as stated by the memorial, any claim for a pension exists, as there is nothing before the committee but the facts memorial, and no proof of the statements made therein, that the committee report adversely thereon, and ask to be discharged, to be further consideration.

DR. A. N. BELL.

JANUARY 14, 1859.—Laid upon the table, and ordered to be printed.

Mr. FREEMAN H. MORSE, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Dr. A. N. Bell, late of the United States navy, have had the same under consideration, and beg leave to submit the following report:

On the 8th day of February, 1854, Dr. Bell was directed by the Navy Department to present himself for examination preparatory to promotion on the 6th day of March following. He accordingly appeared and was examined, but the examining board reported against his advancement. He applied for a re-examination, alleging embarrassment as the occasion of his failure; this was denied him.

In the year following, February 26, 1855, he was again notified to present himself at the Naval Asylum, at Philadelphia, for examination on the 12th of the next March. He was notified May 1, 1855, that he had passed his examination, and had been assigned the rank of passed assistant surgeon, next below Passed Assistant Surgeon Ward.

Dr. Bell claims the difference between the pay of an assistant surgeon and that of a passed assistant surgeon from March 5, 1852, the termination of five years' service as assistant surgeon, to the time when he passed his examination and became a passed-assistant surgeon, said difference in pay amounting to \$680 82. This sum is claimed on the ground that he was at sea when the medical board was in session to examine candidates, and that he could not before obtain an examination, though he more than once applied for it. He was kept at sea most of the time, and in arduous service. It has been the custom of this committee to report favorably in those cases where applicants are unable to stand their examinations by reason of the action of the government, such as absence in service, but who, upon their return, stand their examinations successfully.

Against the prayer of the memorial of Dr. Bell stands the fact that, when he was examined in 1854, two years after he was entitled to an examination, he failed to pass. Now, your committee conceive that, if upon examination in 1854 he was found to be unqualified for promotion, he was certainly much less qualified in 1852. In 1855 he was examined, passed, and assigned his rank as passed assistant surgeon April 21 of the same year. He now asks that the date of

the rank assigned him be altered, and the pay of the increased rank commenced, so as to take effect from May 5, 1852, the time at which those who entered the service with him were examined and promoted.

If, in 1854, Dr. Bell had succeeded in his examination, your committee would have felt no hesitation in reporting favorably upon his petition; but as he failed, and as there is, in the opinion of your committee, neither precedent nor justice in altering the date of increased rank and pay where the candidate for promotion has failed in his examination, they report adversely upon his petition, and ask to be discharged from its further consideration.

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Dr. A. N. Bell, late of the United States Army, have had the same under consideration, and they have the following report:

On the 25th day of February, 1854, Dr. Bell was directed by the Navy Department to present himself for examination preparatory to promotion on the 25th day of March following. He accordingly appeared and was examined, but the examining board reported against his advancement. He applied for a re-examination, alleging embarrassment as the occasion of his failure; this was denied him.

In the year following, February 26, 1855, he was again notified to present himself at the Naval Academy, at Philadelphia, for examination on the 15th of the next March. He was notified May 1, 1855, that he had passed his examination, and had been assigned the rank of passed assistant surgeon, next below Passed Assistant Surgeon Ward. Dr. Bell claims the difference between the pay of an assistant surgeon and that of a passed assistant surgeon from March 5, 1852, the termination of five years' service as assistant surgeon, to the time when he passed his examination and became a passed assistant surgeon, said difference in pay amounting to \$630 82. This sum is claimed on the ground that he was at sea when the medical board was in session to examine candidates, and that he could not before obtain an examination, though he more than once applied for it. He was kept at sea most of the time, and in arduous service. It has been the custom of this committee to report favorably in those cases where applicants are unable to stand their examinations by reason of the action of the Government, such as absence in service, but who, upon their return, stand their examinations successfully.

Against the prayer of the memorial of Dr. Bell stands the fact that when he was examined in 1854, two years after he was entitled to an examination, he failed to pass. Now, your committee conceive that if upon examination in 1854 he was found to be unqualified for promotion, he was certainly much less qualified in 1855. In 1855 he was examined, passed, and assigned the rank of passed assistant surgeon April 21 of the same year. The new case that he

JONAS P. LEVY.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. RITCHIE, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred the petition of Jonas P. Levy, respectfully report :

That there is nothing in the case of the petitioner requiring any action on the part of the House of Representatives.

The committee therefore ask to be discharged from the further consideration of the subject.

SOPHIE A. IRWIN.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. RITCHIE, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred the petition of Mrs. Sophie A. Irwin, requesting a certain sum to be paid to her in lieu of losses sustained by her husband, the Hon. W. W. Irwin, late Chargé d' Affaires of the United States at Denmark, in the sale of his drafts, respectfully report:

That by virtue of "the act establishing a mint and regulating the coins of the United States," passed April 2, 1792, it was enacted that the eagle should be of the value of ten dollars or units, and contain two hundred and forty seven grains and four-eighths of a grain of pure, or two hundred and seventy grains of standard gold. By the same act it was enacted that the silver dollar or unit should contain "three hundred and seventy-one grains and four-sixteenth parts of a grain of pure, or four hundred and sixteen grains of standard silver." (See 1 Statutes at Large, page 248, section 9, of said act.)

The value of the pound sterling of Great Britain, was about four dollars and forty-four cents of the coins gold and silver of the United States; under the said act of Congress and by an "act to regulate the duties on imports and tonage" passed March 2, 1799, Congress directed that the pound sterling of Great Britain should be estimated at four dollars and forty-four cents.—(See 1 Statutes at Large, page 673, section 61, of said act.)

No change was made in the weight or fineness of the coins of the United States until June 28, 1834, when Congress passed an "act concerning the gold coins of the United States," which enacted that the gold coins of the United States should contain "the following quantities of metal, that is to say, each eagle shall contain two hundred and thirty-two grains of pure gold, and two hundred and fifty-eight grains of standard gold," &c., and further, that, "said gold coins should be receivable in all payments, when of full weight, according to their respective values."—(See 4 Statutes at Large, page

699, section 1, of said act.) It was further declared that this act should be in force from and after the 31st day of July, 1834; and that all gold coins of the United States minted anterior to the 31st day of July, 1834, should be receivable in all payments at the rate of ninety-four and eight-tenths of a cent per pennyweight. (Section 5 and 3, of said act.)

By the act of Congress of 18th of January, 1837, "An act supplementary to the act entitled an act establishing a mint, and regulating the coins of the United States," it is enacted (sec. 10) that the weight of the eagle shall be two hundred and fifty-eight grains of standard gold, equal to two hundred and thirty-two grains and two-tenths of a grain of pure gold. It was also enacted that, for all sums whatever, the eagle should be a legal tender of payment for ten dollars.—(See 5 Statute at Large, page 138.)

By "An act to regulate the value to be affixed to the pound sterling by the Treasury Department" passed July 27, 1842, it was enacted "that in all payments by or to the treasury, whether made here or in foreign countries, where it becomes necessary to compute the value of the pound sterling, it shall be deemed equal to four dollars and eighty-four cents, and the same rule shall be applied in appraising merchandise imported, where the value is by the invoice in pounds sterling."—(5 Statutes at Large, page 496.)

It will be observed that whilst the weight of pure silver in the silver dollar has not been changed since the act of 1792, the weight of pure gold in the eagle has been diminished from two hundred and forty-seven and five-tenths grains, to two hundred and thirty-two and two-tenths grains pure gold. During the same period the weight of the sovereign has been increased eight-tenths of a grain, retaining the same standard of fineness, viz: $\frac{915\frac{1}{2}}{1000}$.

The foregoing statement of facts will just about account for the difference between \$4 44 and \$4 84, the former and the present estimate of the value of the pound sterling at the treasury department.

Since the passage of the act of 1834, and more especially since the act of 1837, the gold coin has been practically the real and only measure of value in all business either of the government or people of the United States. The act of 1842 moreover makes it imperative on the treasury department in all cases to estimate the pound sterling at four dollars and eighty-four cents.

Since the passage of the acts of 1834 and 1837, all persons in the employ of the United States, no matter in what department, whether in the civil service or in the army or in the navy, have received their pay in the gold dollars or their equivalent, and your committee can see no reason why any distinction should be made in favor of persons in any one department of the government service over those of any other department. The officers and men in the navy spend much, perhaps most of their pay abroad in foreign countries, and during the Mexican war, those employed in the army also spent their pay in a foreign country. If we make good the difference in value between the old and the new coinage in one case no good reason can be alleged

why we should not do it in another, and we should end by paying the difference in every case where the government has expended money, and getting nothing in any case where it has received money in payment.

With regard to the policy of the change in the value of the gold coins of the United States, your committee are not called upon in this case to express any opinion. The change was made and it is obligatory on the officers of the United States to conform to the laws. If in any instance the difference between \$4 44 and \$4 84 as the value of the pound sterling has been paid to any one at the treasury department of the United States, it has been done clearly in violation of law, because it is not left optional with the officers whether they shall pay at the one rate or at the other. It appears, indeed, that in some instances the difference has been paid, but this has been done evidently through mistake and under the erroneous impression that a difference created by the laws of the United States with reference to the coinage was merely a difference in the rate of exchange between this and foreign countries.

Your committee are therefore of opinion that the prayer of the petitioner in this case should be refused, and ask to be discharged from the further consideration of the subject.

They also ask that the report and papers in this case be printed and laid upon the table.

THOMAS W. WARD.

[To accompany bill S. No. 427.]

JANUARY 14, 1859.

Mr. BRANCH, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred Senate bill No. 427, for the relief of Thomas W. Ward, late United States consul at Panama, have had the same under consideration, and report :

That the facts and grounds on which the claim is founded are set forth in the following letter from the Secretary of State :

DEPARTMENT OF STATE,
Washington, March 30, 1858.

SIR: Your letter of the 25th instant, enclosing the "petition of Thomas W. Ward, late United States consul at Panama, praying compensation for services and expenses in procuring testimony in reference to the outrages on American citizens in the riot at Panama, on the 15th of April, 1856, under instructions from the Secretary of State," has been received, and in reply to the request of your committee to be furnished with any information which the department may have, and with its views respecting the justice of the above claim, I have to state, that the testimony taken by Mr. Ward and transmitted to this department between the 15th of April and 3d of June 1856, in reference to the outrages mentioned, was quite voluminous, and with his despatches upon the subject contained much useful information. The labor of collecting and taking the testimony, in order to place the government and the legation at Bogota, as speedily as possible in possession of all the facts, was without doubt greatly more than he could have accomplished alone, and it is considered but just that he should be reimbursed whatever personal expenses he was subjected to in procuring assistance from others, but the department does not think that he has a rightful claim to anything more, inasmuch as he was at that time a salaried officer, and the information called for by the department was such only as came within the strict line of his

duty. No correct estimate can of course be made here of the amount of Mr. Ward's personal outlays in the matter; and as the papers received from him on the subject, between the dates before mentioned, do not furnish sufficient ground for regarding the certificates accompanying his petition as referring exclusively to such outlays, I can only reiterate the views expressed in the communication addressed to him by my predecessor, under the instructions of the President, on the 15th December, 1856, a copy of which also accompanies the petition, that although no extra compensation can be paid to him, he is entitled to a liberal allowance for any expenditures he was put to in investigating the transactions referred to.

I return herein the papers received with your letter, and also enclose copies of two letters from Mr. Ward, dated 12th and 15th December, 1856.

I have the honor to be, sir, your obedient servant,

LEWIS CASS.

Hon. C. C. CLAY, Jr.,

Chairman, Committee on Commerce, United States Senate.

The committee are of the opinion that the claimant ought to be reimbursed the actual expenses incurred by him in the service alluded to (but not for his personal services,) and therefore they report back the bill with a recommendation that it do pass.

MARY ANN ALBRED.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial of Mary Ann Albred, report :

That the memorialist claims that her father was a soldier in the war of 1812 ; that he was lost on the Canada frontier ; that her mother died before the passage of any act authorizing the payment of a pension to her. She asks that she may be granted a pension in consideration of such facts. Your committee recommend the rejection of her memorial.

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WILLIAM DAILY.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of William Daily, report:

That the petitioner claims to have been a soldier in the war of 1812, under the command of Captain Thomas R. Buchanan, of the second brigade, 1st regiment of Pennsylvania militia. That he marched from Lancaster, Pennsylvania, to Baltimore, Maryland, where he contracted a disease called bilious asthma. He has been so much afflicted with it that he cannot earn a living for himself and wife. The committee do not believe that the evidence is sufficient to justify the granting of a pension. They ask to be discharged.

ELI A. McFADDEN.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and accompanying papers of Eli A. McFadden, report:

That Eli A. McFadden was a lieutenant in the company of Captain E. Julien, Colonel George W. Morgan's regiment of Ohio volunteers, during the war with Mexico. He claims that he had a rib dislocated by a severe cramp, occasioned by exposure in the service. That he resigned in consequence of it. He afterwards went into the service and served to the close of the war. The surgeon does not remember the disability for which he claims a pension. The evidence is wholly insufficient to authorize the granting of a pension. They ask to be discharged.

JAMES DENNY.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and accompanying papers of James Denny, report:

That they have very carefully examined the same and are compelled to report adversely. It is true that James Denny was a soldier and served faithfully. It is true also that he was at times excused from service on guard, &c., because he had a pain in his side. But his discharge does not state he was an invalid. The committee do not think the evidence sufficient to justify the reporting a bill granting a pension. They ask to be discharged.

JAMES DUNN

James D. Dunn—Left upon the table and ordered to be printed.

Mr. Dunn, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and accompanying papers of James Dunn, report:

That they have very carefully examined the same and are compelled to report adversely. It is true that James Dunn was a soldier and served faithfully. It is true also that he was at times exposed to service on land, &c., because he had a pain in his side. But his disability does not state he was an invalid. The committee do not think the evidence sufficient to justify the reporting a bill granting a pension. They ask to be discharged.

JOHN CAMP AND WILLIAM GANT.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petitions of John Camp and William Gant, report:

That they claim to have been soldiers in the war of 1812. That they were wounded or exposed in such a manner as that disabilities were incurred which render them helpless and wholly unable to earn a living, and therefore they ask a pension. They furnish no evidence that would justify the committee in recommending the passage of a bill for their relief.

BENJAMIN ALLEN.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. JEWETT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Benjamin Allen, report :

That he is proven to be fully disabled and now in receipt of a full pension for such disability. There are no good reasons for deviating in this case from the general rule adopted by this committee, not to report bills granting a larger amount of pension than is allowed by the general laws. The committee ask to be discharged.

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MICHAEL LANTIER.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. CHAFFEE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial of Michael Lantier, report :

That petitioner claims to have served a long time in the army of the United States ; is now eighty years old, feeble and infirm. He was never wounded, and his infirmities do not proceed from disabilities incurred in the service. Your committee cannot under such circumstances report a bill for his relief. They ask to be discharged.

MICHAEL LANTIER

January 11, 1881—Read upon the table and ordered to be printed.

Mr. Chester, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial of Michael Lantier, report:

That petitioner claims to have served a long time in the army of the United States; is now eighty years old, feeble and infirm. He was never wounded, and his infirmities do not prevent him from discharging his duties in the service. Your committee report upon each case and advance report a bill for his relief. They ask to be discharged.

JAMES MONROE, SAMUEL STOUFFER, ANTHONY CASTLE
OR CASLOS, CHARLES GRUMPH, MICHAEL R. CLARK,
MARY PERRIGO, AND ELIZABETH N. DENTON.

JANUARY 14, 1859—Laid upon the table and ordered to be printed.

Mr. CHAFFEE, from the Committee on Invalid Pensions, made the
following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petitions of James Monroe, of the State of New York, Samuel Stouffer, of Missouri, Anthony Castle or Caslos, of Indiana, Charles Grumph, of Kentucky, Michael R. Clark, of Mississippi, Mary Perrigo, and Elizabeth N. Denton, of New York, report:

That they have had the same under consideration, and after a patient and careful investigation are compelled to report adversely. They petition for an increase of pension or for arrears of pension. Your committee find that they are now in receipt of pensions at the highest rate, and dating from the time the general pension laws on the subject designate. Your committee are unable to discover any good reason why they should recommend a departure from the wholesome, and, as they believe, correct rule laid down by them, not to report bills granting larger pensions than are prescribed by the general laws, or to report in favor of arrears in any case. They ask to be discharged from the further consideration of the petitions.

JAMES MONROE, SAMUEL STOUTER, ANTHONY GASTIN,
ON CASLES, CHARLES GUMPT, MICHAEL R. CLARK,
MARTY FERRING, AND ELIZABETH K. DENTON.

January 14, 1987—Read twice and referred to the proper

Mr. CLARK, from the Committee on Invalid Pensions, made the
following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition
of James Monroe, of the State of New York, Samuel Stouter, of
Kentucky, Anthony Gump, of Indiana, Charles Gump, of
Kentucky, Michael R. Clark, of Maryland, Marty Ferring, and
Elizabeth K. Denton, of New York, report

That they have had the same under consideration, and after a patient
and careful investigation are compelled to report adversely. They
petition for an increase of pension or for arrears of pension. Your
committee find that they are now in receipt of pension at the highest
rate, and dating from the time the general pension laws on the
subject became operative. Your committee are unable to discover any good
reason why they should recommend a departure from the wholesome
and, as they believe, correct rule laid down by them, not to report
bills granting larger pensions than are prescribed by the general laws,
or to report in favor of arrears in any case. They ask to be discharged
from the further consideration of the petition.

WILLIAM SUTZ.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. CHAFFEE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of William Sutz, report:

That the official furnish no evidence of wounds or disability having been incurred by the petitioner during his service, but negative his statements. The other evidence submitted is not sufficient to justify the granting of a pension. We recommend the rejection of the prayer of the petitioner. They ask to be discharged.

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LAWRENCE MALONEY.

JANUARY 14, 1859. -- Laid upon the table and ordered to be printed.

Mr. CHAFFEE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions to whom was referred the petition of Lawrence Maloney, report:

That there is nothing in the petition or evidence submitted that would justify them in granting relief. Nor does it appear that he has ever applied at the proper department of the government for the purpose of having his claim adjudicated. The committee ask to be discharged from its further consideration.

ELBERT MULLINAX.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. CHAFFEE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and accompanying papers of Elbert Mullinax, report :

That the petitioner was a soldier in the Seminole war. That he claims to have contracted a disease, occasioned by overheat, whilst engaged in digging a pit to cover fleas in. The evidence is not of a sufficient character to authorize the granting of the prayer of the petitioner. If a *flea* plague was so great during that war as to require the digging of a pit so large as to overheat a man in the digging of it, there should certainly be some official record of the same. Your committee ask to be discharged.

CATHARINE KINCADE.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. CHAFFEE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Catharine Kincade, widow of Myers Kincade, of Maryland, report:

That it appears from the petition of the applicant, that her husband was a private in the war of 1812, and attached to Captain Bumberry's flotilla; that he was discharged from the service on the 11th of February 1815, at Fort McHenry. That he applied for a pension in 1817 on account of disabilities incurred whilst in the service as aforesaid. The Commissioner of Pensions reported in favor of granting him a pension whenever he should complete the proof required by the pension laws. That Myers Kincade lived until the year 1837, and yet the pension was not granted. His widow claims that the required evidence was filed in the Pension Office on the 30th November, 1817, and that the certificate of pension should have been issued on that day. She asks that the amount accruing from that time until the day of his death may be paid to her. According to the decision of the department, Attorney General, the courts, and as well as in the judgment of your committee, the pension was a gratuity to the soldier, and inasmuch as he failed to obtain it, the widow is not entitled to the same. They ask to be discharged from the further consideration of the same.

CATHARINE KINGDALE

January 12, 1859. — (All upon the table and referred to the proper authorities.)

Mr. Chairman, from the Committee on Invalid Pensions, reads the following

REPORT

The Committee on Invalid Pensions, to whom was referred the petition of Catharine Kingdale, widow of John Kingdale, of Maryland, agent; That it appears from the petition of the applicant, that her husband was a private in the war of 1812, and attached to Captain Bann's regiment; that he was discharged from the service on the 11th of February 1815, at Fort Mifflin. That he applied for a pension in 1817 on account of disabilities incurred while in the service, and the Committee of Pensions reported in favor of granting him a pension whenever he should complete the proof required by the pension law. That Mrs. Kingdale lived until the year 1837, and yet the pension was not granted. His widow claims that the pension was filed in the Pension Office on the 30th November, 1817, and that the certificate of pension should have been issued on that day. She asks that the amount accruing from that time until the day of his death may be paid to her. According to the decision of the Department, Attorney General, the certificate, and as well as the judgment of your committee, the pension was a gratuity to the soldier, and inasmuch as he failed to obtain it, the widow is not entitled to the same. They ask to be discharged from the further consideration of the same.

JESSE KINNEY—HEIR OF.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. CHAFFEE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial of Roann Sage, heir of Jesse Kinney, deceased, report:

That the memorialist claims that her father, Jesse Kinney, was killed at the battle of Queenstown, and that her mother applied at the proper department for a pension on account of his death in the service. That she was refused because she could not furnish proof that her husband was killed in the service. Her mother is now dead, and she asks that the pension that she conceives her mother was entitled to at her death may be paid to her. There is nothing before your committee that would authorize them to report a bill granting the memorialist relief. They ask to be discharged from further consideration of the same.

ORIGINAL ARTICLES

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PUBLISHED WEEKLY
CHICAGO, ILL., U.S.A.
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ALAMANDER VAUTER AND ELIZABETH BREEDING.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. CHAFFEE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petitions of Alamander Vauter and Elizabeth Breeding, report:

That the petitioners are now on the pension roll at the highest rate of pension to which they are entitled. They were also placed on the roll and their pension made to commence from the period designated by the laws governing invalid pension claims. Your committee report adversely.

ALAMANDER VAUTNE AND ELIZABETH BREEDING

January 14, 1855—Laid upon the table and referred to the Select

Committee from the Committee on Jewish Religion, made the following

REPORT.

The Committee on Jewish Religion, to whom were referred the petition of Alamander Vautne and Elizabeth Breeding, report:

That the petitioners are now on the petition roll of the District of Columbia, and are entitled to the same rights and privileges as other citizens of the District. They were also present on the roll and their names were so entered in the roll of the District. It is the duty of the District of Columbia to protect the rights of all citizens, and to the best of its power to do so.

SIMON SMITH.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. CHAFFEE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Simon Smith, report:

That this is a claim for arrearages of pension claimed to have been due Simon Smith at his death. Congress has been asked to pay the amount to his children. Recent decisions of the Attorney General, the law officer of the government, say that the payment of arrears to children is a violation of the law. He has been confirmed by the courts and the action of Congress, under such circumstances your committee feel compelled to report adversely. They ask to be discharged.

JOHN CUNNINGHAM.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. CHAFFEE, from the Committee on Invalid Pensions, made the following

R E P O R T .

The Committee on Invalid Pensions to whom was referred the memorial of John Cunningham, report :

That the petitioner claims to have performed long and arduous service in the army of the United States ; that he was taken prisoner and confined in dark and loathsome dungeons, &c. ; that he is now old and infirm. He asks a pension on account of his service and age. There is no evidence upon which they could report a bill granting relief. It does not appear that he ever applied to the Pension Office for relief. The committee ask to be discharged.

JOHN CUNNINGHAM

Presented at 1854—Read upon the table and referred to the committee

Mr. CHASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions to whom was referred the memorial of John Cunningham, report:

That the petitioner claims to have performed long and arduous service in the army of the United States; that he was taken prisoner and confined in dark and filthy dungeons, &c.; that he is now old and infirm. He asks a pension on account of his services and age. There is no evidence upon which they could grant a bill granting relief. It does not appear that he ever applied to the proper authorities for relief. The committee ask to be discharged.

EZEKIEL JONES.

[To accompany Bill H. R. No. 795.]

JANUARY 14, 1859.—Read twice and committed to a Committee of the whole House.

Mr. CHAFFEE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Ezekiel Jones, asking a pension for injuries received in the line of his duty in the United States navy during the war with England in 1812-'15, report :

It appears from the papers before your committee that the petitioner entered the naval service in 1808, and continued in said service and was in several engagements with the enemy during the war with England of 1812-'15 ; was twice wounded, and in the month of July, 1814, was captured from the United States brig "Syren," of sixteen guns, by the British seventy-four gun ship "Medway," and was detained a prisoner till the proclamation of peace. Subsequent to this time he entered the revenue cutter service, and has been in the service of the country over *forty years*, passing through some of the most perilous and exciting scenes in our history, through all of which he stood his post when "duty was danger and hesitation disgrace." During the Florida war he was actively and perilously engaged in co-operating with the army on shore as well as the navy afloat. He is now old and disabled by injuries, and your committee think him justly entitled to a pension. They therefore report a bill for his relief.

SARAH HILDRETH.

[To accompany Bill H. R. No. 796.]

JANUARY 14, 1859.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Sarah Hildreth, submit the following report:

Your committee are of opinion, on an examination of the facts and circumstances of this case, that the petitioner is justly entitled to the charity of the government, and therefore report the accompanying bill. The case is particularly stated in the report of a former committee, to which this committee beg leave to refer.

FEBRUARY 9, 1848.

The Committee on Invalid Pensions, to whom was referred the petition of Mrs. Sarah Hildreth, submit the following report:

The petitioner is the widow of John Hildreth, deceased, who, during the late war with Great Britain, enlisted as a soldier during the war, in the company commanded by Captain Henry Leavenworth, which was attached to the 25th regiment United States infantry. The said John Hildreth, during the period of his service, was in the battles of Little York, Fort George, and Fifty Mile creek, in Upper Canada, (in which last engagement he was wounded,) besides several skirmishes with the enemy; in all of which he acted bravely, and discharged his duty as a faithful soldier. He was at one time taken prisoner, but made his escape from the enemy, and returned to his company. In the latter part of the year 1813, he contracted a disease by fatigue and exposure which terminated his life on the 1st day of January, 1814, at Sackett's Harbor. The petitioner has remained a widow since the death of her husband. She applied for a pension, believing she was entitled to it, but was informed by the Commissioner of Pensions, that "the widow of a soldier of the army is in no case entitled to a pension, whether he died of disease or of wounds."

Your committee are of opinion for these reasons, connected with the reduced circumstances in life of the petitioner, that she is entitled to relief, and have accordingly reported a bill for that purpose.

REPORT

OF THE

JANUARY 15, 1852.

Mr. Speaker from the Committee on Invalid Pensions reads the following

REPORT

The Committee on Invalid Pensions, to whom was referred the petition of Mrs. John A. Hildreth, widow of John A. Hildreth, deceased, who

Your committee are of opinion, on an examination of the facts and circumstances of this case, that the petitioner is entitled to the bounty of the Government, and therefore report the accompanying bill. The case is particularly stated in the report of a minority, to which this committee has been referred.

January 15, 1852.

The Committee on Invalid Pensions, to whom was referred the petition of Mrs. John A. Hildreth, widow of John A. Hildreth, deceased, who

The petitioner is the widow of John A. Hildreth, deceased, who during the late war with Great Britain, enlisted as a soldier having been in the company commanded by Captain Henry Hildreth, which was attached to the 25th regiment United States Infantry. The said John Hildreth, during the period of his service, was in the ranks of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th, 101st, 102nd, 103rd, 104th, 105th, 106th, 107th, 108th, 109th, 110th, 111th, 112th, 113th, 114th, 115th, 116th, 117th, 118th, 119th, 120th, 121st, 122nd, 123rd, 124th, 125th, 126th, 127th, 128th, 129th, 130th, 131st, 132nd, 133rd, 134th, 135th, 136th, 137th, 138th, 139th, 140th, 141st, 142nd, 143rd, 144th, 145th, 146th, 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WILLIAM McKENZIE.

JANUARY 14, 1859.—Laid upon the table and ordered to be printed.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of William McKenzie, report :

That they have examined the same, and have been unable to find that the petitioner has ever applied at the pension office for relief. They have adopted a rule not to adjudicate cases until application shall have been made to the proper department. They ask to be discharged.

WILLIAM McKENNA

January 11, 1882. Read upon the table and referred to the committee.

Mr. President, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of William McKenna, report

That they have examined the same, and have been unable to find that the petitioner has ever applied at the pension office for relief. They have adopted a rule not to adjudicate cases until application shall have been made to the proper department. They ask to be discharged.

MOSES GROOMS.

JANUARY 14, 1859.

Mr. ANDERSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Moses Grooms, report:

That they have had the same under consideration, and find that he volunteered as a private into the company of Captain H. Sumpter, of the South Carolina volunteers, Palmetto regiment. That he proceeded with said company to Charleston, South Carolina, to be mustered into the service, but while on sentinel duty one very dark night he was so severely kicked by a mule that he was disabled from being mustered into the service, and was confined in the hospital at Charleston for six weeks thereafter. That he is now a cripple from the effects of said kick; that he is very poor and unable to earn a living. The nature and extent of his disability is sworn to by his commanding officer. The objection to the allowance of a pension by the proper department is that he had not been mustered into the service. Your committee are satisfied that it was no fault of his that he was not mustered into the service. They report a bill granting a pension of eight dollars per month from the 14th May, 1858, to continue during life.

JOSEPH FILES AND GILBERT COOPER.

JANUARY 14, 1859.—Laid on the table and ordered to be printed.

Mr. ANDERSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petitions of Joseph Files and Gilbert Cooper, report:

That the petitioners are now in receipt of the largest pensions provided by existing laws. Your committee cannot discover anything that would justify them in going beyond that allowance. They recommend the rejection of the prayer of the petitioners, and ask to be discharged.

REGISTERS AND RECEIVERS OF LAND OFFICES.

JANUARY 18, 1859.—Laid upon the table and ordered to be printed.

Mr. RUFFIN, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom were referred the petitions of Cade D. Strickland, jr., register, and J. B. McClendan, receiver of the land office at Greensburg, in the State of Louisiana, and other registers and receivers at various land offices, praying for an increase of salary, have had the same under consideration and report :

The petitioners are registers and receivers of land offices, and in the petitions which are substantially the same in each case, they set forth the reasons why they consider an increase of compensation to be expedient and proper. The committee after due examination of the subject have come to the conclusion that the compensation now provided by law is sufficient, and the committee do not consider that the public interests require any change in the existing laws fixing the compensation of registers and receivers of land offices; and ask to be discharged from the further consideration of the subject.

REGISTERS AND RECEIVERS OF LAND OFFICES

January 15, 1856—Read upon the table and ordered to be printed.

Mr. BERRY, from the Committee on Public Land, made the following

REPORT.

The Committee on Public Land, to whom were referred the petition of
GEO. A. SWICKARD, Jr., register, and J. B. McCLINTOCK, receiver of
the land office at Greenburg, in the State of Louisiana, and other
petitioners and receivers of various land offices, praying for an increase
of salary, have had the same under consideration and report:

The petitioners are registers and receivers of land offices, and in
the petitions which are substantially the same in each case, they
set forth the reasons why they consider an increase of compensation
to be expedient and proper. The committee after due examination of
the subject have come to the conclusion that the compensation now
provided by law is sufficient, and the committee do not consider that
the public interests require any change in the existing laws fixing
the compensation of registers and receivers of land offices; and ask
to be discharged from the further consideration of the subject.

OREGON.

[To accompany bill S. 239.]

JANUARY 18, 1859.—Ordered to be printed.

Mr. ZOLLICOFFER, from the Committee on Territories, submitted the following

MINORITY REPORT.

The undersigned has not been able to concur with the majority of the committee in favor of the bill for the admission of Oregon into the Union.

The population of the proposed State, in his opinion, is not yet sufficiently large to entitle it to admission. Since the organization of the federal government nineteen States have been admitted into the Union, and no instance has ever occurred in which a State has been admitted with a population less than the ratio of representation in Congress at the time, with the single exception of Florida, in which instance the population, at the time of application for admission, was more than equal to the existing representative ratio; but a delay of six years intervening, the ravages of Indian warfare and a change in the ratio, caused the population, at the time of actual admission, to fall something below the amount required by this well established rule. The rule is founded in wisdom, justice, and the safety of the republic, and should never be departed from unless under the pressure of an overshadowing necessity. In the case of Oregon there is no such necessity, and a clear want of showing of population equal to the present ratio of representation. This is conclusive with the undersigned. By the last census, taken in 1855-'6, the population was but 43,472. The aggregate popular vote at that time, on the convention question, was 9,261, and for delegate in Congress, 10,121. The popular vote in 1857 had not increased, being, on the convention question, 9,296, and for delegate, 9,133. This would seem to indicate a slowly increasing population. Yet, in the face of such facts, the representative and one of the senators elect express the opinion that the population is "between 80,000 and 100,000," and the other senator elect thinks it "very nearly equal to the ratio." Still the main fact is wanting, that it is, in fact, quite equal to the ratio; and the official evidence is indicative of a decided deficiency.

If admitted under these circumstances, the precedent would be

a dangerous one. Other communities, with populations less than that of a congressional district, would also knock at the doors of Congress for admission, and would be admitted. Such petty communities, erected into States, would at once assume a footing of exact equality with the most populous States of the Union. With populations less than that of one thirty-third part of that of the State of New York, they would each wield in the Senate of the United States a power equal to that of New York; and, in a contingency under the Constitution, an equal power in the elections of President and Vice President of the United States. In all the independent powers of the Senate, the treaty-making power, the trial of impeachments, the confirmation of ambassadors, judges of the Supreme Court, and other important public officers, these small communities would have a perfect equality of suffrage with the most populous States of the Union. In those other vast powers of the Senate, too, which it exercises as a correlative branch of Congress, such as upon questions of war, levying and collecting taxes, regulating commerce with foreign nations and between the States, raising and supporting armies, &c., &c., they would hold an equal check upon the large and populous States representing the masses of the people. Their introduction, as a balance of power, might, therefore, not only be made to control presidential elections, but the very destinies of the American Union.

Would this be just to the larger States, or to the bulk of the American people? Would it be safe to the government, to the integrity and duration of the Union itself? How long would it be before party politicians, holding temporary ascendancy in the government, would be tempted to bring in new States, regardless of population, merely as a balance of power to enable them to control the government? How long before this would bring retaliation, in a more reckless spirit, and where and when would such warfare terminate, once begun? The undersigned submits whether the highest considerations of patriotism do not demand of us to pause before taking a step fraught with dangers of such magnitude to the government. Now is the time to arrest this tendency. No temporary considerations of expediency should tempt us to depart from the safe, just, rational usage of those who have gone before us. As to Oregon, if her population is rapidly increasing, she will soon be prepared for admission. Until then she can well afford to wait.

It has been said that we are under obligation to admit Oregon, even with a population of 60,000; because, as is alleged in the act organizing the Territory, the ordinance of 1787 was extended to Oregon, which ordinance provided, with reference to States to be carved out of the then "territory northwest of the river Ohio," that whenever they attained a population of 60,000 free inhabitants they should be entitled to admission. This argument is clearly founded in error. No such obligation rests upon Congress, as the undersigned will now proceed to show.

The 14th section of the act organizing the Territory of Oregon provides "that the inhabitants of said Territory shall be entitled to enjoy all and singular the rights, privileges, and advantages granted and secured to the people of the territory northwest of the river Ohio,

by the *articles of compact* contained in the ordinance for the government of said territory on the 13th day of July, 1787."

This is the provision relied upon. But by turning to the ordinance of 1787, it will be found that the "articles of compact" referred to are of two kinds, not only those securing rights, privileges, and advantages to "*the people* of the territory," but those securing rights, privileges, and advantages to "*the States* in the said territory," and that in the *latter* is to be found the provision as to "60,000" inhabitants, while the language of the organic act of Oregon as to the rights granted and secured "to the *people* of the territory" does not include the latter or articles of compact with "the States."

The "articles of compact" are six in number; the first three and the sixth relating strictly and exclusively to the rights of "*the people* of the territory;" the fourth relating both to the rights of the people and of "the States" to be carved out of the territory, and the fifth relating *alone to the States* to be so formed, which last is the one referring to the terms of admission, and is in the following words, to wit:

"ART. 5. There shall be formed in said territory not less than three nor more than five States; and the boundaries of the States, so soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western States in the said territory shall be bounded by the Mississippi, the Ohio and Wabash rivers, a direct line drawn from the Wabash and Port Vincent due north to the territorial line between the United States and Canada, and by the said territorial line to the Lake of the Woods and Mississippi. The middle States shall be bounded by the said direct line, the Wabash from Port Vincent to the Ohio, by the Ohio by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern States shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided, however,* And it is further understood and declared, that the boundary of these three States shall be subject so far to be altered that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. *And whenever any of the said States shall have sixty thousand free inhabitants therein such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the original States in all respects whatever: Provided,* The constitution and government so to be formed shall be republican, and in conformity to the principles contained in these articles; and, so far as can be consistent with the general interests of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand."

Now this article was simply an "article of compact between the original States" and "the States in the said territory," States located, specifically laid off, and described. It was wholly distinct from the articles of compact with the people of the territory, which secured to them the important "rights, privileges, and advantages"

of "life," "liberty," "property," "religious worship," "the writ of habeus corpus," "jury trial," and all other rights commonly incorporated into the several constitutions of the States of the Union. The language of the Oregon act—"the rights, privileges, and advantages granted and secured to the people of the territory northwest of the river Ohio"—manifestly related to *these*, and *not* to the compact with the "States" carved out of said territory, which simply laid off their boundaries, and guarantied to them admission into the Union upon the acquisition of sixty thousand inhabitants. To assume otherwise would involve us in inexplicable difficulty—to assume that any part of this fifth section is extended to Oregon would bind us to assume that the whole of it is—that is, that "there shall be formed in the said Territory of Oregon not less than three nor more than five States," and then following, as a consequence, all the details as to *boundaries* with their several specifications, touching the Miami, the Wabash, the Ohio, the Mississippi, &c., which would be supremely ridiculous. The undersigned will not, however, further pursue this branch of the argument.

There is a single point in the constitution of Oregon against which he feels it his duty to enter his solemn protest. He alludes to the clause allowing unnaturalized aliens to vote for members of the legislature. He regards this clause as violative of a fundamental principle of the Constitution of the United States. It cannot be doubted that such alien electors are thereby to be regarded as at once introduced as a component part of the sovereign power *controlling the federal government*. They thereby become, according to all practical usage, electors of representatives in Congress, electors of those who choose United States senators, and hold the power to determine the electors of President and Vice President of the United States. Thus, to the body of aliens so introduced into the body politic is given a direct or indirect power of control over every department of the federal government. This, he respectfully but earnestly submits, is subversive of the very foundation idea of the government itself.

The Constitution of the United States was established by *the people or citizens of the United States* for their *own* benefit and that of those who are to come after them, and not for the benefit of unnaturalized foreigners, owing no allegiance to the government and not bound to defend it. It was ratified by the States, and they are bound to observe and respect its principles. The first clause in the Constitution is the following declaration:

"We, *the people* of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, and secure the blessings of liberty *to ourselves and our posterity*, do ordain and establish this Constitution for the United States of America." The undersigned would call attention to the words "the people." The Supreme Court, in the Dred Scott decision, interpreting this clause of the Constitution, expressly declares:

"The words 'the people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty and who hold the power and conduct the government

through their representatives. They are what we familiarly call the 'sovereign people,' and *every citizen* is one of this people and a constituent member of this sovereignty."

That is, the Constitution, where it says "the people," means "the citizens," and that "every citizen" is a "constituent member of the body politic," who "form the sovereignty," "hold the power and conduct the government through their representatives." But does this exclude "unnaturalized foreigners?" Unquestionably it does. The Court continues:

"The Constitution has conferred on Congress the right to establish a uniform rule of naturalization, and this right is evidently *exclusive*, and has always been held by this Court to be so. Consequently, no State since the adoption of the Constitution can by naturalizing an alien invest him with the *rights and privileges secured to a citizen of a State under the federal government*," &c.

Again says the Court: "The word 'citizen' excludes unnaturalized foreigners, the latter forming *no part of the sovereignty*, owing it *no allegiance*, and are therefore under *no obligations to defend it*." The undersigned believes with the Supreme Court that the citizens of the United States are the body politic, "the sovereignty," and that "unnaturalized foreigners," who form *no part* of the sovereignty, owe it no allegiance, and are under no obligations to defend it, cannot possibly be admitted to "hold the power and conduct the government through their representatives" without violence to the Constitution.

He believes with John C. Calhoun that "alien" and "citizen" are co-relative terms, and stand in contradistinction to each other;" that "the effect of naturalization is to remove alienage;" that "to remove alienage is simply to put the foreigner in the condition of the native born;" that "whatever difference of opinion there may be as to what other rights appertain to a citizen, all must, at least, agree that he has the right of petition, and also to claim the protection of his government. These belong to him as a member of the body politic, and the possession of them is what *separates* citizens of the lowest condition from aliens and slaves. To suppose that a State can make an alien a citizen of the State, or, to present the question more specifically, can confer upon him the *right of voting*, would involve the absurdity of giving him *a direct and immediate control over the action of the general government, from which he has no right to claim the protection, and to which he has no right to present a petition*."—(See speech in Senate, April 2, 1836.)

It will be seen that Mr. Calhoun held that the "right of voting" appertains to citizenship. The Supreme Court expressed the same sentiment in other words—that is, that the citizens form the sovereignty, hold the power, and conduct the government. For the right of voting is the power to "conduct the government." Mr. Jefferson said "a republic" is "*a government by its citizens in mass*," (see letter to John Taylor;) and again, that "the true foundation of republican government is *the equal right of every citizen* in his person and property and in their *management*."—(See letter to Mr. Kerche-

val.) These are but various forms for expressing the same fundamental principle. So general has become this concurrence of opinion among the most accredited expounders of the Constitution, that Webster in his dictionary defines a "citizen" to be, "in the United States, a person, native or naturalized, who has the *privilege of exercising the elective franchise*, or the qualifications which enable him to vote for rulers and to purchase and hold real estate;" elsewhere he says "the right to vote for governors, senators and representatives, is a franchise enjoyed by *citizens* and *not belonging to aliens*." Mr. Madison said (see *The Federalist*, p. 248:) "The definition of the right of suffrage is very justly regarded as a *fundamental article of republican government*. It was incumbent on the convention therefore to define and establish this right in the Constitution." And this they accordingly did in the second section of the first article, as follows:

"The House of Representatives shall be composed of members chosen every second year by *the people* of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

Here the words "the people" of the several States are, as the Supreme Court has declared, equivalent to "the citizens" of the several States, and therefore unquestionably *exclude all but citizens*. The word "qualifications" in the last clause of the section excludes even a portion of the citizens, such portion as may be excluded for want of a freehold or other "qualification requisite" in the several States. In some of them, at the time the Constitution was framed, all citizens not possessing a "freehold" were excluded, while in others other qualifications were requisite for electors of the most numerous branch of the legislature. In some, all citizens were allowed to vote; in none, however, was the right granted to *unnaturalized foreigners*. Such a thought as allowing aliens to take part in the election of members of Congress never seems to have occurred to the convention. The word "qualifications" was unquestionably intended to limit, to restrict, to confine the body of voters to *such portion* of the citizens as were allowed to vote in the several States, while the words "the people of the several States" absolutely excluded all others, because the aliens were "no part of the sovereignty, owing it no allegiance, and under no obligations to defend it."

Upon this point, fortunately, we are not left to conjecture. The whole debate in convention on the adoption of this section of the Constitution is before us, and it throws a flood of light upon this question. Here is its substance. Gouverneur Morris moved to strike out of this section the clause relating to "qualifications" and to insert instead that none but "freeholders" should vote. The debate then turned wholly upon this precise issue. Mr. Wilson opposed the motion of Mr. Morris on the ground that it would be "hard and disagreeable to *exclude* from voting" those who vote for representatives in the State legislatures. Mr. Ellsworth said "the *people* will not readily subscribe to the national Constitution if it should subject them to be *disfranchised*." Colonel Mason said "eight or nine States have extended the right of suffrage *beyond freeholders*. What will

the people there say if they should be disfranchised?" Mr. Butler "opposed abridgement." Mr. Dickinson supported the amendment, advocating "restriction of the right" of suffrage "to freeholders." Mr. Madison said "the right of suffrage is certainly one of the *fundamental articles of republican government*, and ought not to be left to be regulated by the legislature." Whether the constitutional *qualification ought to be a freehold*, would with him depend much on the reception such a change would meet with by the people, &c. In several of the States a freehold was *now the qualification*." Dr. Franklin was opposed to "the elected *narrowing the limits* of the electors." Mr. Mercer objected to the footing on which the *qualification* was put. Mr. Rutledge opposed "the idea of *restraining* the right of suffrage to the freeholders."

Thus the whole body of debaters saw in the word "qualification" nothing but *restriction, limitation, narrowing the limits of the electors*. The final conclusion was to narrow the limits only where the States had themselves expressly done so—that is, everywhere to let those citizens vote for representatives in Congress who were permitted to vote for members of the most numerous branch of the State legislature. But the idea of letting *aliens* vote is not only excluded absolutely by the first clause of the section confining the right to the "*people*" or *citizens*, but from the whole tenor of the debate it is manifest that it did not enter the brain of any solitary member of the convention.

The undersigned does not mean to assert that Congress can look into the constitution of a State asking for admission further than to see that it is republican, and not in conflict with that of the United States, or that the general government can regulate the right of suffrage in the States. Far from it. It is the right of every State to determine who of its *own citizens* shall vote for every office; and in regard to offices strictly municipal, the States may constitutionally, if they choose, permit aliens to vote. But whilst the States may confer upon aliens *rights of citizenship in matters pertaining exclusively to the State*, they cannot constitute the *status* of citizenship, they cannot convert *aliens* into *citizens*, that power having been conferred by the Constitution upon Congress alone, and they cannot, therefore, give to aliens the *rights of citizenship in matters pertaining to the federal government*. But to give to aliens the right to vote for members of the State legislature, as is the case in the Oregon constitution, gives them incidentally a power of control over every department of the general government, and therefore it is our duty to resist this innovation upon the rights of the general government at the very threshold. As the people framed and the States ratified the general government as it is constituted, they are bound by every consideration of good faith to stand by it in its letter and spirit. Whilst the rights of the States as they have been reserved should be sedulously maintained, those rights which have been conceded to the general government should not be ruthlessly ignored. Especially is this true with regard to those elemental principles upon which rests its self-preservation. The general government stands between us and all foreign innovation or invasion.

It was established by the *citizens* of the United States for their *own benefit* and the benefit of those who are to become citizens by birth-right or naturalization. In all elective governments, in all ages, from the time of the Grecian republics down to our own time, the right of suffrage has been held to belong to none but citizens. This fundamental principle of self-preservation having been fully granted to our general government, it is unwise and unsafe to ignore it, and give thoughtlessly the destinies of such a government into the hands of those who "owe it no allegiance," have "no right to claim its protection," or even to present to it "a petition."

When a State has once been admitted into the Union, with such provision as that pointed out in the Oregon constitution, the undersigned would not counsel coercion by the federal government to bring about a change. But when a Territory asks to put on the garb of State sovereignty and to be admitted into the Union is, in his judgment, the precise point of time at which to make this issue. Such proposed State should be required to conform, to use the language of Mr. Madison, to the "fundamental articles of republican government," particularly that great first article which regards a "republic," to use the language of Mr. Jefferson, as "a government *by its citizens in mass*." In this particular the Oregon constitution is not only not "republican," but is in direct conflict with the Constitution of the United States. For this and the foregoing reasons the undersigned is constrained to withhold his assent from the bill admitting Oregon into the Union.

F. K. ZOLLICOFFER.

OREGON.

[To accompany bill S. 239.]

JANUARY 18, 1859.—Ordered to be printed.

Mr. GROW, from the Committee on Territories, submitted the following

VIEWS OF THE MINORITY.

Views of a minority of the Committee on Territories on the application of the people of Oregon for admission into the Union.

By section 3, article 4, of the Constitution, it is provided that "new States may be admitted by the Congress into the Union." The time, mode, and manner of admission are, therefore, left by the Constitution wholly to the discretion of Congress. In the exercise thereof States have been admitted, some with, some without, a previous act of Congress authorizing the people of the Territory to form a constitution and State government. The Territories of the Union have thus been transformed into States without uniformity in the mode and manner of procedure, and without any uniform number of population—the whole subject of the propriety of admission having been left to the discretion of Congress at the time of the application of the proposed State.

The two Houses of Congress, however, at their last session declared in their action on the application for the admission of Kansas as a State, that its then existing population was sufficient for its immediate admission into the Union as a slave State; but if its people were unwilling to come into the Union with such a constitution, then they were authorized to elect delegates to form a constitution and State government preparatory to their application for admission "whenever, and not before, it is ascertained, by a census duly and legally taken, that the population of said Territory equals or exceeds the ratio of representation required for a member of the House of Representatives of the Congress of the United States." That restriction upon the action of the people of Kansas received the approval of the President, and is now a law upon the statute book.

The President, not satisfied with his official approval of the act at the time of its passage, takes occasion, in discussing the Kansas

question in his annual message at the opening of the present session of Congress, to say, relative to the admission of Kansas as a State: "*Surely it is not unreasonable to require the people of Kansas to wait, before making a third attempt, until the number of their inhabitants shall amount to ninety-three thousand four hundred and twenty.*"

Had the reasonableness of this requirement suggested itself to the President in his message transmitting the Lecompton constitution to Congress, much valuable time in the legislation of the country might have been saved, and a "dangerous" sectional agitation avoided.

The President, in the same annual message, also declares that any attempt by the people of Kansas to form a State constitution before the number of their population reaches the required amount, would be "*in express violation of the provisions of an act of Congress,*" and in the judgment of the President therefore could not lawfully be made. Should it be attempted, judging of the future by the past conduct of the Executive towards the people of Kansas, the President would declare it a case of rebellion or treason, and the army of the republic would again be employed, under the plea of preserving "law and order," to suppress constitutional liberty in Kansas.

This is the first instance in the history of the government in which Congress has declared that the same population that is recognized as sufficient for a slave State was not sufficient for a free one. And the Chief Magistrate of the republic not only sanctions such a discrimination, but avows his readiness to insist on it in the execution of the laws, so far as they affect the people of Kansas.

With this law on the statute book, and with these official declarations of the President, it is proposed to admit Oregon into the Union with a population less than the number required by this law, and, from the best sources of information within the reach of your committee, not exceeding, if equal to, that of the Territory of Kansas.

The population of Oregon, by the census taken in 1855, was forty-three thousand four hundred and seventy-two, (43,472.) The largest vote polled at any election in said Territory was ten thousand one hundred and twenty-one, (10,121.) The total vote for State officers, at the election held on the first Monday of June last, was ten thousand and forty-nine, (10,049,) and for a member of Congress, at the same time, ten thousand one hundred and five, (10,105.)

The total vote polled in Kansas two months later, on the proposition submitted by Congress, as certified by the board of commissioners, was thirteen thousand and eighty-nine, (13,089,) which did not include two hundred votes rejected by reason of informality in the returns. So the entire vote of Kansas on the first Monday of August last was thirteen thousand two hundred and eighty-nine, (13,289,) being three thousand one hundred and eighty-four more than were polled in Oregon.

The undersigned minority of your committee are unable to appreciate the fairness or justice of this kind of legislation towards the people of different Territories, and are unwilling to give their sanction in any way to a discrimination as to the number of population required

for a free or slave State, and much less as to the controlling political character of the proposed State.

The applications for both Kansas and Oregon to be admitted into the Union were presented at the last session of Congress. Neither had been authorized by a previous act of Congress to form a constitution, so in that respect they were both alike. So far as could be ascertained there was little or no difference as to the number of their population. Each had elected "*a State legislature and other officers,*" and so far they were alike prepared to enter the Union.

The only real difference that existed in the two cases prior to the application for either was that Oregon had a territorial government not unsatisfactory to her people, and a legislature chosen by her own citizens, while the territorial organization of Kansas was a usurpation by fraud and force, and its political power had been wielded by usurpers and despots.

Without expressing any opinion as to the propriety of a restriction on the new States as to population, if general in its character, or as to the necessity for any previous act by Congress authorizing the formation of a State government, and without inquiring whether the constitution presented by the people of Oregon is republican in form and consistent in its provisions with the guaranties of the Constitution of the United States, so long as the restriction on the action of the people of Kansas remains on the statute book the admission of Oregon would be an unjust discrimination between the people of different Territories, if not an endorsement of the odious distinction made in the law of the last session of Congress against free institutions and free States.

The undersigned minority of the committee therefore recommend the following as an additional section to the bill reported by the majority.

Be it further enacted, That so much of an act entitled "An act for the admission of the State of Kansas into the Union," approved the 4th day of May, A. D. 1858, as provides that "whenever, and not before, it is ascertained by a census duly and legally taken, that the population of said Territory equals or exceeds the ratio of representation required for a member of the House of Representatives of the Congress of the United States," be, and the same is hereby, repealed.

GALUSHA A. GROW,
AMOS P. GRANGER,
CHAUNCEY L. KNAPP.

...and much has to be done in the political
 character of the proposed State.
 The application for the Kansas and Oregon to be admitted into
 the Union was presented at the last session of Congress. Neither
 had been authorized by a provision of the Constitution to make a com-
 mittee to inquire into the propriety of the admission. So far as could be
 ascertained there was little or no difference as to the number of their
 members. Each had elected a committee and other officers.
 and as they were alike proposed to enter the Union.

The only real difference that existed in the two cases prior to the
 application for either was that Oregon had a territorial government
 not satisfactory to her people, and a legislative assembly by her own
 action, while the territorial organization of Kansas was a usurpation
 by Great Britain and the political power had been withheld by
 Congress and despoiled.

The object of the present report is to give an opinion as to the propriety of a resolution
 on the new States as to representation. It is given in its character, or as
 in the necessity for any provision not by Congress authorizing the
 creation of a State government and without inquiring whether the
 resolution presented by the people of Oregon is representative in form
 and consistent in its provisions with the guarantees of the Constitu-
 tion of the United States, so far as the restriction on the action of
 the people of Kansas relative to the admission of the Territory
 is concerned. It is not an endorsement of the action of the people of
 Oregon, but an attempt to show the distinction between the people of the
 Territory and the people of Kansas, and the same as before reported.

The undersigned minority of the committee therefore recommended
 the following as an additional section to the bill reported by the ma-
 jority.

SEC. 2. That as much of an act entitled "An act for
 the admission of the State of Kansas into the Union," approved the
 22d day of May, A. D. 1858, as provides that "whereas, and not
 before, it is ascertained by a census duly and legally taken, that the
 population of said Territory equals or exceeds the ratio of represen-
 tation required for a member of the House of Representatives of the
 Congress of the United States," be, and the same be hereby repealed.

GALLUP A. GROW,

AMOS P. GRANGER,

CHARLES J. KNAPE.

JAMES A. GALLAGHER.

JANUARY 20, 1859.—Laid upon the table and ordered to be printed.

Mr. SCOTT, from the Committee on the Post Office and Post Roads, made the following

REPORT.

The Committee on the Post Office and Post Roads, to whom was referred the memorial of James A. Gallagher, praying for relief against his unjust deprivation of a post office contract, report :

That the memorialist, James A. Gallagher, alleges in his memorial that on the 13th day of March, 1840, he perfected and completed a contract with the United States to carry the mail of the United States for four years from the 1st of June, 1840, from Baltimore, Maryland, to Carlisle, Pennsylvania. The said memorialist further alleges that subsequently the said contract was taken from him by the Post Office Department and given to one Sterritt Ramsay. The reason assigned by the department for their taking the contract from said memorialist, Gallagher, and assigning it to said Ramsay was owing to an assignment or transfer filed in the department, that the said Gallagher had made over and transferred all his interest in said mail contract to said Ramsay. The memorialist, Gallagher, denies under oath having ever made any such transfer of said mail contract, and alleges that the said transfer was a forgery. Here the validity of the assignment or transfer is the only question involved, and upon that point alone the memorialist, Gallagher, seems to base his prayer for relief at the hands of Congress. From a careful examination of the papers filed in the case, your committee are of the opinion that the weight of evidence is against the memorial of Gallagher.

1. The copy of the original transfer is filed among the papers which is duly sworn to and attested by one witness, William S. Ramsay, whose character for veracity is not impeached in a legal or proper manner. In that transfer the right of said Gallagher to carry the mail from Carlisle to Baltimore is assigned over to Sterritt Ramsay. And there is no rebutting testimony offered to the above sworn copy of said transfer from Gallagher to Ramsay but Gallagher's denial and allegation that it was a forgery, which is sworn to by Gallagher himself.

2. The testimony of Irwin G. Suden, duly sworn to, goes to establish the validity of the transfer of Gallagher to Ramsay of the said mail contract, and the said Suden swears that Gallagher told him, the

said Suden, that he (Gallagher) "had transferred the stages, stock, and mail contract to Sterritt Ramsay." Suden further states "that he saw and read the transfer signed by Gallagher," and that the said "mail contract" was assigned to Sterritt Ramsay. In addition to the foregoing evidence, the Postmaster General, on the 20th of October, 1840, gave a hearing both to the said Gallagher and Ramsay; and, after having fully considered the matter in controversy between said parties, confirmed the transfer, thereby recognizing the validity of the said transfer. There is no evidence produced on the part of the memorialist, Gallagher, to prove the fact that said transfer was a forgery, as alleged in his memorial, save his own sworn statements and a few letters on file, which go more to show that said Gallagher is an honest and good man, which circumstance has nothing to do with the merits of the case.

Under these circumstances, your committee recommend that the prayer for relief on the part of the said memorialist should not be granted, and report adversely on the same.

DAVID MYERLE.

[To accompany bill S. 120.]

JANUARY 21, 1859.

Mr. ARNOLD, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill No. 120, have had the same under consideration, and submit the following report:

That after a careful examination of the case, they are fully satisfied that the claimant is entitled to the proposed relief.

The Senate report accompanying the bill under consideration contains a full history of the case; and that report, together with the report of the Committee on Naval Affairs of the House of Representatives, 1st session 29th Congress, and of same committee 1st session 32d Congress, presents an able discussion of the questions and principles involved—both of which are hereunto annexed and made part of this report.

Those reports represent that David Myerle, the claimant, has conferred upon the country a great benefit, at the sacrifice of a large amount of property and years of persevering toil; and those representations are confirmed by the evidence which the committee has had under consideration.

It appears that the claimant, in the year 1839, at the earnest solicitation of Mr. Paulding, who was then Secretary of the Navy, embarked upon the enterprise of demonstrating the practicability of water-rotting hemp, which was then forbidden by a fallacious but deeply-seated prejudice against the process, arising from the general belief that it was pestilential and impracticable in our climate; that in order to carry out his purpose the Secretary of the Navy gave to the claimant contracts for five hundred tons of American water-rotted hemp; that the hemp, when offered for inspection, was rejected, in repugnance to the spirit and intent with which the contract was made; that the claimant was thereby defeated in his expectations of the profits he would have realized from the five hundred tons of hemp, if it had been received. The price stipulated to be paid to the claimant for the hemp was three hundred dollars per ton. It appears that the

cost of the article to the claimant was one hundred and seventy dollars per ton, and that, therefore, his profits upon the five hundred tons would have been sixty-five thousand dollars. The object of the Secretary of the Navy, in entering into the contract, was not so much to obtain the quantity of hemp contracted for as to demonstrate the fallacy and groundlessness of the prejudice existing against the process of preparing hemp. The nominal object was to procure a specific quantity of hemp, but the *real* and *great* purpose was to open the way whereby our country might become independent of a foreign soil for an article of indispensable importance to our naval marine.

The Secretary of the Navy, in the prosecution of his laudable design, induced the claimant to embark in the enterprise, and gave him the assurance that he should be recompensed for any loss which he might ultimately sustain *even in the event of a failure of the experiment*.

The claimant, after several years of energetic perseverance, achieved a full and complete success ; but in conferring a vast and almost inappreciable benefit upon the country, he appears to have sacrificed a large amount of property, and the profits of a large and prosperous private business, which fell into decay and went to ruin for the want of his personal attention, which seems to have been entirely engrossed by the hemp enterprise, in which he embarked at the request and solicitation of a high functionary of the government.

Mr. Paulding testifies that he, in the character of Secretary of the Navy, made to the claimant a promise of indemnity against loss, and that he was induced to make that promise solely in the hope of being instrumental in conferring a benefit upon his country, and under a full conviction that, if he remained in office, he would redeem his pledge without transcending his powers or violating any existing law. He also testifies that, had he continued at the head of the Navy Department, he would have caused the hemp of the claimant to be received, as he was of the opinion that its superiority in strength more than counterbalanced any alleged inferiority of cleanliness, and that the claimant had substantially fulfilled his contract according to the understanding of the parties. But a change in the administration of the government deprived Mr. Paulding of the power to protect the claimant, by the redemption of his pledge ; and, inasmuch as that pledge was made with a view to the achievement of an object of national importance, which was, through the instrumentality employed, thoroughly accomplished, it seems to be nothing more than simple justice that the government should recognize and fulfill the engagement. The committee are fully satisfied of the correctness of the statement of Mr. Paulding in reference to the unfairness and injustice of the rejection of the hemp offered for inspection by the claimant, and that, under all the circumstances, the hemp should have been received.

The committee are further satisfied that the claimant did fully achieve the great aim which the enterprise had in view, and that through his instrumentality our country has been rendered independent of a foreign market for an ample and unfailing supply of a staple of indispensable utility to our naval and commercial marine. The legality of the contract made by the Secretary of the Navy with the claimant, and upon which this claim is founded, has been questioned, and the

liability of the government disputed on the ground that it was made without the sanction of law. That it was not made in strict and literal conformity to law is not denied; yet the Secretary of the Navy appears to have acted under the impression that in making it he did not transcend his lawful authority. According to his testimony it appears that he took the advice of the Attorney General of the United States—Felix Grundy—in reference to his authority, and from that source became satisfied that, in making a contract in such a case, he was not bound by the strict requirements of the existing law in regard to the making of contracts for supplies. Although the contract may be held, when viewed in a technical or strictly legal sense, as not binding, yet, when the fidelity with which it was made, the great object which it contemplated, and the triumphant achievement of that object are taken into consideration, it becomes as binding on the equity and conscience of the government as it would have been in a legal sense if it had been made with the full and literal sanction of law; therefore, if the hemp of the claimant was improperly rejected, and the committee have no doubt that such was the case, he would have, by the rule of damages in the law of contracts, a claim upon the government for the loss of the profits which he would have realized from the five hundred tons of hemp, if his hemp had been received instead of being rejected. It appears that the hemp forwarded by the claimant for inspection, and which was rejected, went upon the market as a condemned article, and sold under heavy charges for about what it cost the claimant at the place of delivery, so that no profit was realized from it, leaving him totally unindemnified.

But to leave the contract entirely out of the question as to its binding force upon the government, and viewing the claimant in the light of an agent employed by the Secretary of the Navy to accomplish an object of national concern, with the assurance that he should sustain no loss in the prosecution of the enterprise, and taking into view the fact that claimant succeeded in the full achievement of the object, and in so doing conferred a great and lasting benefit upon the country, it seems to the committee but an act of simple justice to make at least a reparation for the injuries which the claimant has suffered in the prosecution of the enterprise. The committee are satisfied that the sacrifices and losses of the claimant have exceeded the amount of the bill now pending for his relief, and that the government is in equity and justice bound at least so far to indemnify him. The justice of this claim has been recognized by fourteen favorable reports from committees in Congress; bills for the relief of the claimant have three times passed the Senate, and the same number of times the House of Representatives, but never concurrently so as to become a law. The Court of Claims, after an elaborate investigation, has commended the case to the favorable consideration of Congress. The Senate, at the last session, upon the unanimous recommendation of its Committee on Claims, passed, by a very large majority, the bill now under consideration. During the pendency of the Senate bill before that body, the Committee on Naval Affairs of the House of Representatives at the last session reported a bill for the same amount; and the committee being of the opinion that the Senate bill now under consideration pro-

poses a relief within the bounds of justice and moderation, report back the same, with a recommendation that it become a law.

IN THE SENATE OF THE UNITED STATES, *February 3, 1858.*

Mr. MALLORY made the following report.

The Committee on Claims, to whom was referred the case of David Myerle, reported from the Court of Claims, unanimously report:

The claim was first presented to the Senate by the memorial of the claimant at the 1st session of the 28th Congress, and has been continuously prosecuted to this time.

The nature of the claim is shown by the evidence taken before the Court of Claims, and which is briefly recited in the decision of the Court as showing the nature of the arrangement made by Mr. Paulding, in 1839, as Secretary of the Navy.

Mr. Paulding states, that while he was at the head of the Navy Department the claimant called on him with reference to certain improvements he had made in the machinery for manufacturing cordage; that, perceiving the claimant to be an intelligent and enterprising man, he suggested to him that it might be advantageous to him to engage in the business of water-rotting hemp, and that the claimant stated, that although he did not believe the occupation to be dangerous to those engaged in it, yet, being then engaged in a profitable business, he was unwilling to relinquish it for one which he foresaw would be attended with almost insurmountable obstacles, and a failure in which would involve him in great pecuniary loss. *The Secretary then assured the claimant that the department would take care that he should be recompensed for any loss he might ultimately sustain in consequence of a failure of the experiment; and he states that he made this promise solely in the hope of being instrumental in conferring a great benefit on his country, and under a full conviction that if he remained in office he would redeem his pledge, without transcending his powers or violating any existing law.* He says further, that the claimant, being influenced, as he believes, by these assurances, as well as by motives of patriotism, acceded to his proposition, and a contract was entered into with him for two hundred tons of American water-rotted hemp; that the claimant made no application for a contract; that the proposal came from the Secretary; that no advertisements for proposals were issued, nor was any security demanded for the fulfillment of the contract, as the whole affair was considered as an experiment, made with a view to settle a question of great national importance. Mr. Paulding says, also, that his object was to remove the prejudice against the process of water-rotting, and demonstrate the practicability of producing a domestic article equal to the first quality of Russian hemp.

The claim is based upon the grounds, 1st. That the hemp delivered by him at Boston, under the contracts, was improperly rejected, whereby the enterprise, which promised remuneration, was converted into

the means of his ruin ; and 2d. Upon the promise of indemnity against loss made by the Secretary of the Navy.

Upon both of these grounds the Court of Claims decided against the claimant, holding that there was no legal liability which could be enforced in that Court against the government, as the act of March 3, 1809, provides that "all purchases and contracts for supplies or services which are or may, according to law, be made by or under the direction of either the Secretary of the Treasury, the Secretary of War, or the Secretary of the Navy, shall be made either by open purchase or by previously advertising for proposals respecting the same."

The Court while, however, deciding against the legal liability of the government, thought, from the peculiar circumstances of the case, that they should lay the facts before Congress, with the remark that "the evidence tends to show that an active and enterprising man of business became embarrassed in his circumstances, and was deprived of the just and fair profits of an honest occupation by his efforts to promote a matter of national concern," and they therefore submit "the whole matter to the consideration of Congress for such action as they, under all the circumstances, shall consider just and equitable."

The committee are of opinion that it is both just and equitable, under the circumstances of the case, that the applicant should receive compensation.

In reference to the contract for and the delivery of hemp, Mr. Paulding states, in his letter of January 4, 1853 :

"In all the testimonials I have given in behalf of your claim I was governed by no papers or representations of yours. I stated facts, and only such facts as were known to myself, and many of them notorious to the public. I stated, in the first place, that it had long been the wish of the government to procure a supply of American water-rotted hemp for the consumption of the navy, in order that the country might be independent of foreign nations, especially in time of war ; but that all efforts had been unsuccessful, principally on the score of its being universally considered in the west an unhealthy occupation, fatal to the slaves who would be principally employed in the business.

"I stated that, in consequence of my solicitations and encouragement, you were unwillingly induced to undertake this most important business, and that, accordingly, a contract was entered into for the supply of several hundred tons of American water-rotted hemp.

"I stated that, after surmounting great obstacles, you at length succeeded so far as to deliver a large supply of American water-rotted hemp at the Boston navy yard, which, being tested with the best Russia, proved considerably stronger, but was rejected by the inspectors on the frivolous pretext that it was not quite so clean ; and I now state that the late Commodore Nicholson, who afterwards commanded at Boston, has since assured me that corrupt means were used to induce the inspectors to come to that decision.

"I further stated, what was already sufficiently notorious, that in consequence of your success in the production of water-rotted hemp, and the proof thus afforded that it was not an unhealthy occupation, others had entered upon it, insomuch that the naval and commercial marine of the United States are in a great measure supplied with

American water-rotted hemp, and no longer dependent on foreign nations for an article so indispensable.

“All this I stated from my own knowledge, and not from your papers and representations; and consequently, thus far, there was no deception on your part.

“With regard to your pecuniary circumstances at that time I said nothing, because I knew nothing, and did not think it had the slightest connexion with the justice of your claim. I had a great national purpose in view, and I found in you a man ready to undertake its accomplishment; if you succeeded, the country would be greatly benefitted; if you failed, it would be just where it was before. No advances of money were required, and no injury to the public interest could occur from your failure, as the department had then on hand a supply of Russia hemp for two years, if I recollect aright; at any rate, for a very considerable period.

“There was no deception here. Whether solvent or not solvent at the time you entered on the contract is of no consequence to me or the country, provided you succeeded in your undertaking; and with unfeigned respect for Congress, I do not perceive how the decision of this question can affect the justice of your claim in the slightest degree, that is a private affair between you and your creditors.

“The facts I have stated, and which are notoriously true, sufficiently prove that you was the principal instrument in conferring a great benefit on your country; whether rich or poor when you began is of little consequence to any one but yourself. It is sufficient to know that you are now poor, and that this poverty is clearly owing to the improper rejection of your hemp at Boston, which effectually arrested all future efforts, and was sufficient to ruin your affairs. Nothing is more common than for men to commence business, or enter on great undertakings, on borrowed capital, and to take the risk of success or failure. Nor, however I may disapprove of such a course, do I think justice should be denied them, because, perhaps, the loss may fall on others. If any other person or persons have a legal claim in any portion of the anticipated bounty of Congress, it seems to me it should be decided by a court of judicature, not by Congress.

“I do not know whether you lost any money by your contract, or whether you had any to loose; but this I know, that you spent years of your life, and encountered a series of labors, obstacles, and discouragement in prosecuting your undertaking, which deserves some remuneration, and that for the last seven or eight years you have been condemned to a purgatory of cares, anxieties, losses, and disappointments, which I would not have endured for ten times the sum you may receive from the justice or the bounty of Congress.”

The damage claimed by Mr. Myerle for the rejection of his hemp, as shown by the statement in the report from the Court, page 44, is \$65,000, being the difference between \$150,000, the contract price for 500 tons, and the cost delivered at Boston of \$85,000.

There is a good deal of other evidence in the record, as to whether the hemp was or was not properly rejected; but in the view taken of the case by the Court, in which the committee concurs, it is not necessary to go into the details, and it is only here referred to as one of the

items which enter into consideration in the judgment to which the committee have arrived.

It is shown also by the evidence that the rejection of this hemp not only deprived the claimant of the profit which had been anticipated by the contract, but produced overwhelming embarrassment in his pecuniary affairs. At the time he undertook this experiment he appears to have been a man of means, extensively and prosperously engaged in the rope business. His devotion and zeal in the prosecution of the business of water-rotting hemp, under the engagement with the Secretary of the Navy, together with the rejection of his hemp, reduced him to poverty.

In a letter from Secretary Badger, dated Navy Department, May 10, 1841, addressed to Mr. Myerle, he says: "The patriotic spirit which prompted you to the great undertaking in which you are now employed, and the perseverance with which you have prosecuted it, deserve and have the commendation of the department."

The committee find that this experiment was not only prosecuted with great zeal and perseverance, but that it was also conducted to a successful result, promotive of great advantage to the best interests of the country.

On this point there is abundance of proof, but it is not deemed essential to do more than to extract the following:

Willis Stuart, of Louisville, Kentucky, says, in his letter dated November 10, 1845: "I hope that Congress will yet do you justice, as you have certainly lost the last six or seven years in endeavoring to confer a great benefit on your country, and in which you have certainly succeeded. It is said that republics are ungrateful, and they doubtless are so in many instances; yet a distinguished statesman of our day has said: 'Truth was omnipotent and public justice certain;' and I hope that you will yet be amply rewarded for all your toils and sacrifices."

In a letter of Mr. Buchanan, dated Wheatland, September 2, 1850, he says: "When you undertook the task of instructing the hemp growers of the west the art of water-rotting hemp in such a manner as to render it a healthy employment, and had entered into a contract with the Secretary of the Navy to furnish the department with a quantity of the article, I felt a lively interest in your success. This induced me to watch your progress with much solicitude. I had many conversations with you on the subject. *The result of your labors has been a great benefit to the country. We now have an ample supply of an article necessary for self-defence,* whilst its cultivation has been and will continue to be a source of profit to many of our agriculturists."

Again, in a letter from the same gentleman, dated London, December, 14, 1855, he writes: "I am truly sorry my recollection does not serve me in this particular, because I espoused your cause *from a sincere conviction that it was just.*"

In the report of Secretary Mason, dated December 4, 1848, it is stated: "The supply of hemp on hand, and deliverable under contracts already existing, render it unnecessary to advertise for any additional quantity for the present year. *That American hemp can be*

prepared in quality equal to any in the world has been established by experiments under the most rigid tests."

These extracts, together with the statement of Mr. Paulding, heretofore quoted, are sufficient to show that the country has gained great advantage from the services of Mr. Myerle, and as those were performed under an agreement, made *bona fide* with the Secretary of the Navy, it is but just, in the opinion of the committee, that some compensation should be made therefor, though it may be admitted that the law did not authorize the Secretary to bind the government by such an agreement.

The committee has traced the history of this claim in the two Houses of Congress since its first presentation, and find that during the 29th, 30th, 32d, and 33d Congresses, six times have bills been reported in favor of the applicant in the Senate, and, during the same period, seven times in the House of Representatives. That, in the 30th and 33d Congress, the bills passed the Senate, and that, in the 29th, 30th, and 32d Congresses the bills passed the House three several times.

The committee has looked to these bills as some evidence of the opinion of Congress as to the amount which should be allowed the claimant. The sum stated in the bills which passed the Senate in the 33d Congress, and the House the 2d session of 32d Congress, is \$30,000, with interest from 1st January, 1850. The committee does not regard this as equivalent to the damages claimed by Myerle, but as those damages do not arise under any binding contract with the government, they adopt the amount which those bills would give as the nearest approximation to an equitable allowance as the evidence of the case would seem to authorize.

The committee report a bill and recommend its passage.

“HOUSE OF REPRESENTATIVES, JUNE 17, 1846.

“*The Committee on Naval Affairs, to whom were referred the memorial and accompanying papers of David Myerle, report :*

“That, from the memorial and accompanying evidence, it appears that the memorialist, previous to the year 1840, had been long and extensively engaged in the manufacture of cordage, and was possessed of much useful knowledge on the subject of the growth, preparation, and manufacture of hemp.

“That it had long been considered an object of the highest national importance, and as vitally essential to our true independence of other nations for one of the most important elements of national defence, to introduce and establish the practicability and safety of the process of water-rotting hemp in the hemp-growing regions of the United States, for the supply of its navy and commercial marine.

“That, previous to the period named, many efforts and experiments had been made, both under the sanction and encouragement of the government and by individual enterprise, to accomplish this important end ; but that all such efforts had proved unsuccessful and abortive,

and had left a deep and abiding impression on the public mind that the said process was impracticable in our climate, owing to its unhealthiness, and if practiced would produce pestilence and destruction of life wherever it was attempted. That so violent were the prejudices against the operation, after all the efforts that had been made, that scarcely a ton of water-rotted hemp was made in the whole hemp-growing region of the United States.

“That, notwithstanding this state of public opinion and prejudice was almost universal, at the period named, the knowledge and experience of the memorialist led him, in his interviews with the navy commissioners and the Hon. J. K. Paulding, then Secretary of the Navy, to express the utmost confidence in the entire practicability and safety of said process, and of the feasibility of successfully overcoming, by a course of proper experiments, the deep-rooted prejudices against it.

“That, concurring in the views of the memorialist, and justly considering it an object of the highest national consideration, and eminently entitled to the patronage and encouragement of the government, the Secretary of the Navy, Mr. Paulding, urged the memorialist to abandon the business in which he was then engaged, as far as it should be necessary, and to enter upon and carry out, in the heart of the hemp-growing region of the west, the experiments necessary to establish both the practicability and safety to health of the process of water-rotting hemp. That to induce him to do so he tendered him the patronage of the government, and made the most liberal promises of encouragement and indemnity against loss, and, if successful, of the most generous reward from the government. That the navy commissioners, at the time, fully concurred in the views of the Secretary, and, as the memorialist alleges, the chairman and several members of the Naval Committee of the House of Representatives warmly coincided in the same.

“That, under these assurances and promises, and with much zeal and patriotic pride, in anticipation of the successful accomplishment of the objects and wishes of the government, and at the same time of conferring a great benefit upon his country, the memorialist agreed to abandon all other business, and enter at once upon the experiments proposed.

“That, until Congress should act in aid of the objects of the department—which action seems to have been relied upon both by the memorialist and the department, instead of a contract—to sustain, save harmless, and reward the memorialist, as was promised and intended, and for the purpose of at once exercising, to that end, all the powers which he possessed, the said Secretary directed a contract to be entered into with the memorialist (but taking no security from him) for the delivery of 200 tons of American water-rotted hemp, to be equal to the best Russian, during the year 1841; and before its delivery, or any part thereof, and in full view of the great difficulties and uncertainty of a literal compliance with the strict terms of the contract by the first experiment, caused that contract to be extended to 500 tons, to be delivered by the close of 1842.

“From a careful examination of the case, the committee are satisfied that it was not the sole or leading object of the department,

by the contract entered into with the memorialist, merely to give a preference to American water-rotted hemp, and to obtain the domestic article, in that particular instance, if as good as Russian ; but, on the contrary, that the great and leading national object was, by the patronage of the government, and the success of the experiment to be made by the memorialist under that patronage, to establish the practicability and safety of the water-rotting process in our own country, and thus provide for the supply of our own navy and merchant shipping with an American article equal to the foreign.

“This object is distinctly avowed by Secretary Paulding in his letters and report to the Senate, and is abundantly shown by the evidence in the case. The correspondence between the memorialist and the department, during the year 1840, shows, beyond all question, that his efforts were viewed as an experiment, in which that branch of the government took the deepest interest. The application of the Secretary of the Navy to Congress for authority, contrary to existing laws, to keep the memorialist under an advance of twenty-five thousand dollars, which passed the Senate, but failed in the House for want of time, as is alleged, shows the same thing ; and the debate and action of the Senate show that that body also concurred in the objects of the Secretary in favor of this great American interest.

“After having entered into the foregoing arrangements with the Secretary of the Navy, the committee are satisfied that the memorialist, abandoning every other object and pursuit, entered upon the accomplishment of the difficult task assigned him with the most entire good faith, and continued to prosecute the same with a degree of zeal and energy as rare as they were commendable. The plan adopted was the one best calculated to accomplish the object ; it was the ‘*experimentum crucis*’ of purchasing hemp, constructing proper pools, and actually water-rotting the same, in the different counties and neighborhoods throughout a wide circle of the hemp-growing region of country.

“The expenses attendant upon these operations of the memorialist, which were all borne by himself, must have been very heavy ; and the difficulties and obstacles in the beginning are represented as almost insuperable, growing out of the deep-rooted prejudices of the people, founded upon an almost universal belief of the fatal effects of the process upon the lives of both men and animals. His workmen (of whom, at one period, he had about two hundred) were difficult to procure, owing to a fear of the effects upon their health, and, when obtained, at high prices, had to be instructed in every part of the process of water rotting and preparing the hemp for market.

“At the close of the fall of 1840, the memorialist seems to have established the entire practicability of carrying on the process of water-rotting hemp without any serious detriment to the health of the country ; and so complete was the change of public opinion on this point, founded on the actual experiments of the memorialist and the evidence of their own senses, that a great number of the most respectable planters entered into an agreement with him to furnish him with water-rotted hemp in 1841, some engaging to furnish as much as one hundred tons.

“The process of preparing the hemp for delivery to the government was then commenced and carried on through the winter; and though attended with much difficulty, owing to a total want of experience on the part of the workmen, yet, as the only difficulty supposed to be insuperable (that of practically establishing, to the satisfaction of the country, that pestilence did not accompany the process of water-rotting) had been completely overcome, and as this was a part of the experiment which a little time and experience could not fail to overcome, the experiment seems to have been considered, both by the memorialist and the department, as promising entire and certain success.

“During all this period, the correspondence between the memorialist and the department shows the deep interest taken by the latter in the success of the experiment. Samples of the hemp were sent to the department, examined, formally inspected and approved, and the memorialist warmly congratulated upon the successful issue of his efforts.

“During the latter part of the winter of 1841, two shipments of hemp were made for the government to Boston, to be delivered and inspected at the Charlestown navy yard, whilst other portions of the same were being prepared for shipment. On the 3d of March, 1841, (the day Mr. Secretary Paulding's term of office expired,) though no portion of the said two hundred tons had been delivered within the year limited by the first contract—neither of the said shipments having reached Charlestown until after the expiration of the period limited by the contract for the delivery of the whole—the said contract was extended to five hundred tons, to be delivered on or before the 1st of December, 1842.

“This extension of the contract by Mr. Paulding, before any part of the two hundred tons had been delivered, (though the period of the delivery of the whole had passed,) shows, as the committee believe, that the contract entered into with the memorialist was not considered by the Secretary as an ordinary one, nor the relations existing between the memorialist and the government those existing between it and ordinary contractors.

“Shortly after this extension of the contract the two shipments of hemp arrived, were examined, scrutinized, condemned, and rejected, as the memorialist alleges, unjustly and without cause, and from an ignorance of or prejudice against the domestic article, and, as Mr. Paulding states, against his intentions, had he remained in the department.

“At the time of this rejection it appears that the memorialist's private affairs had become deranged, from an entire neglect of them to insure the success of the hemp experiments; his credit had become greatly extended, from the heavy expenses of his hemp operations; the bills he had drawn against these shipments were returned protested; the hemp at his depots, in the course of preparation for shipment, as well as all his private property, was seized; and, in a word, his credit entirely destroyed, and all his property sacrificed, and he left a helpless bankrupt, and has remained so from that day to the present. Against this unjust rejection of his hemp the me-

memorialist protested, and appealed to the assurances, objects, and motives, under which he had been induced to accept the contract, but in vain. The total destruction of his credit, and the sacrifice of all his property, which followed the rejection, deprived him of all the benefit expected and intended from the extension of his contract, out of which, he alleges, with much appearance of truth, he would have been enabled to realize a large profit of from forty thousand to fifty thousand dollars, from the favorable auspices under which he would have progressed with his contract, having already overcome the prejudices of the hemp-growers, and established the pools, depots, and machines necessary for the supply of the balance of the five hundred tons under his extended contract.

“After a careful examination of the case, the committee are satisfied—

“1. That the hemp of the memorialist was improperly rejected, and that, from the evidence of those who examined and used portions of the same, and who were competent judges of its quality, it should have been received; that if Mr. Paulding had remained in office it would have been received, in fulfilment of what he understood to be the duty, obligations, and objects of the department, in view of the circumstances and assurances under which the memorialist had been induced to undertake the experiments. The committee believe that the rejection of the memorialist's hemp was probably owing to Mr. Paulding having left the department, and a want of knowledge of the objects of the department, and of the true relations existing between the memorialist and the government. The inspection at Charlestown seems, from experience, to be an unfavorable one for American water-rotted hemp. In his late annual report, the present Secretary of the Navy says that, *‘finding by short experience that to insist on the inspection of Charlestown, as heretofore practised, would be injurious to the western planter,’* he proposes that the annual purchases of that article, when not provided otherwise by contracts already made, *‘be delivered and finally inspected at Louisville and St. Louis.’*

“2. That the consequences of the rejection of the hemp were most disastrous to the memorialist, causing a total destruction of his credit; a deprivation of all the benefits intended by the extension of his contract, which, it is believed, would otherwise have been highly profitable; and the sacrifice of all his property, alleged and believed, from the evidence, to be from thirty to forty odd thousand dollars, leaving him largely in debt and a bankrupt.

“3. That all the benefits contemplated by the government when the experiment was undertaken have been fully realized by the exertions and sacrifices, and entirely at the expense, of the memorialist; and that, mainly through these, there is now an abundant supply of American water-rotted hemp for the use of the navy and merchant vessels of the United States, leaving, as they are informed and believe, a considerable quantity for exportation; thus rendering these States independent of other nations for an article most essential both to their navy and marine, and, as an element of war, vitally necessary to the defence of the country.

“The memorialist has established, by the strongest evidence, derived

from the public press, and from the opinions and statements of great numbers of the best informed and most respectable public men and private citizens of the hemp-growing States, the entire success of the experiments undertaken by him, and the introduction of the process, and the present supply of the American article, as the consequence of that success. In the report of the present Secretary of the Navy, above alluded to, he says: '*Nothing but American hemp has been received under any contract made since I came into the department.*'

"In a letter of the late Mr. Secretary Paulding, addressed to the memorialist, and laid before the committee, after stating that his object in making the contract with him '*was not the paltry* one of obtaining two hundred tons of hemp, but the practicability of producing American water-rotted hemp, and to encourage its production, with a view to render our country independent of all others for the supply of an article equally indispensable to our navy and commerce;' and after setting forth the previous experiments that had been made, and their complete failure, so that, according to his belief, '*not a pound of water-rotted hemp was produced*' at the time the memorialist undertook his experiments; and after stating that, *to his knowledge*, the memorialist had '*succeeded in demonstrating the practicability of producing water-rotted hemp,*' he says:

"'If, as appears to be the case, the production of water-rotted hemp has already extended not only to the domestic supply, but to large exportations of that article, I have no hesitation to express my entire conviction that this result is in a great measure, if not altogether, owing to your having set the first successful example.'

"In the same letter he further says:

"'In my opinion, setting aside all *little technical* points and *nice distinctions*, the country owes you the price of a *great benefit*, and is under *strong obligations* to your enterprise, your perseverance, and your *sacrifices*, to make you amends.'

"4. In conclusion, the committee believe, therefore, that whatever doubts may be entertained as to the strict legal right of the memorialist to the relief which he prays, founded upon the breach of his contract by the rejection of his hemp, in violation of the promises and inducements held out to him by the Secretary of the Navy, he has a well-founded claim, both in justice and equity, for his losses and sacrifices in behalf of the government and country; and that, independent of this, he has strong claims upon that country as a public benefactor, which ought not be disregarded, and which entitle him to relief out of the common treasury of the nation, whose commerce, agriculture, and manufactures have been equally benefited by his exertions and individual sacrifices—sacrifices which ought to be borne by all those benefitted thereby, rather than by the individual who made and has been ruined by them. The committee, therefore, believe that this is a case in which a full and even liberal measure of relief is required, both by public justice and sound public policy. They therefore report a bill."

Most of the statements of that report of the Committee on Naval Affairs, January 30, 1852, are fully sustained by the evidence, and to that extent your committee adopt it as a part of their report. It is

clearly proven that the said Myerle gave up a profitable and extensive business, in which he had a large sum of money invested, to enter upon this experiment; that he did so at the strong solicitation of the Secretary of the Navy, "who tendered to him the patronage of the government, and made the most liberal promises of *encouragement, and indemnity against loss, and, if successful, the most generous reward from the government.*" If there were no other evidence of this fact, it is sufficiently proven by the letter of Mr. Paulding himself, who was then Secretary of the Navy. Speaking of the report of Mr. Holmes, in which this statement occurs, he says: "It coincides with my recollections as well as my intentions while in the department." In his letter of March 8, 1848, he also says: "Had I not been prevented by a political revolution, I would have fulfilled every pledge I made you to the very letter, and at least saved you from any loss after all the labor and risk you incurred." He further says "that Myerle devoted himself to the work industriously and energetically, and did sustain a heavy loss from the undertaking, without any fault of his own." Your committee are of opinion, from the evidence, that the experiment in its public aspect (and it was undertaken almost entirely for the public good) has been *entirely successful.*

At the time Myerle engaged in it there was scarcely a pound of American hemp water-rotted in the United States, and the strongest prejudice prevailed against the process. That prejudice has been entirely dissipated, and the process has been established as practicable and introduced into common use in the west. So completely has the American hemp taken possession of the market that the annual importation of the Russian hemp has fallen from about 6,000 tons in 1839 to 1,200 in 1844. This important change, so beneficial to the interests of our own country, is primarily attributable to the persevering efforts of Mr. Myerle.

The Committee on Naval Affairs of the Senate, in a report made by them on this claim at the first session of the 30th Congress, not only sustained it on this ground, but also on the further ground that the hemp delivered by Myerle, under his contract of 1840, was improperly rejected, and he improperly subjected to loss by that means. That committee say further: "That the inducements and promises held out to the memorialist, in case of success, impose a clear and unquestionable obligation under the United States to indemnify him for his losses, and grant him a proper remuneration for his services." "They further concur with the committee of the House of Representatives in the opinion that the rejection of the memorialist's hemp was groundless, and a virtual breach of contract, which justly entitled him to relief on that ground also.

Waiving all claim to remuneration for his services, or to that "*generous reward*" promised by the Secretary of the Navy in case of success, Myerle will be content, as appears from his memorial, with indemnity against the actual loss which he has sustained. This he appears to your committee to be entitled to, whether his experiment be considered a successful one or not. His loss sprang from no fault of his own; for he clearly devoted himself to the work with all assiduity, and the Secretary of the Navy promised indemnity against loss if he would *attempt*

the experiment, and, in addition, a "*generous reward*" if it proved successful.

In relation to the propriety of the rejection of Myerle's hemp, delivered under his contract in 1841 and subsequently, your committee do not regard that question as one vital to this claim. If, however, that rejection was improper, it greatly strengthens the grounds on which the claim rests. And that it was improper appears to be clear from the testimony submitted.

Mr. Paulding, in his letter of March 8, 1848, addressed to Mr. Myerle, and above referred to, says: "Had I been at the head of the Navy Department at the time your hemp was rejected, I would most assuredly have taken upon myself the responsibility of directing it to be received, notwithstanding it was reported as inferior, *not in quality*, I believe, but in cleanliness, or something of that sort."

Now, Mr. Paulding was the author of the contract with Myerle, and of course understood all its terms and conditions. Occupying that position, his declaration is entitled to much weight when he says that the hemp was "improperly rejected." In his letter of the 25th of March, 1846, addressed to the same, he says: "I never had the slightest doubt that you were the *victim* on the trial of your hemp at the Boston navy yard." And in his letter of February 28, 1849, he says: "I had been for some time very desirous to procure a supply of American water-rotted hemp for the navy, in order to render the United States independent of foreign nations for this indispensable article, especially in time of war; and when you first called on me at the department on business connected with your machinery for manufacturing hemp, I suggested the matter to you. You thought the thing practicable, but stated many objections, and declined the undertaking until I offered such encouragement as overcame your objections. You sought no contract; the proposal came from me; and I always believed that one of your leading motives was that by which I was myself governed, namely, a wish to confer a benefit on your country. You succeeded, and were ruined.

"A change of administration had occurred, and I left the department before I could redeem the engagement I had entered into with you, and which, as I said before, induced you, in some measure, to enter on this laborious and hazardous undertaking.

"Though the object I had in view has been completely attained, through your energy, perseverance, and sacrifices, and the country is now thoroughly supplied with water-rotted hemp of domestic production, I cannot but regret that it has been by the sacrifice of your own property, aggravated by repeated disappointments in seeking some little recompense for your labors, losses, and mortification.

"Having forever retired from public life, I am greatly disinclined to seeing my name connected with any species of discussion or controversy about past transactions in the department over which I presided. But as it was in a great degree through my encouragement and solicitations you were induced to enter on this hazardous enterprise, I have been, am, and always shall be, willing to lend my aid, so far as truth will sustain me, in placing your claim on the justice of your country on the footing it merits.

“After you had shown that the impression of its being a peculiarly unwholesome and dangerous occupation had no foundation in fact, there were not wanting a sufficient number of applicants to the department for contracts.”

But, independently of this testimony of Mr. Paulding, there is other testimony going to establish that the hemp was sufficiently strong, and indeed much stronger than that imported from Russia, and, according to tests actually made, proved its capacity to bear a weight of several hundred pounds more than that prescribed by the regulations of the department. Messrs. Lombard and Witmore, shippers, of Boston, to whom Myerle's hemp was consigned, in part, and who were privy to all the facts, clearly intimate that opinion; while Benjamin Sewall, who purchased a portion of the same hemp from them, says “that it was a perfect article, clean, free from tow, and of strong fibre.”

The committee are unable to resist the conclusion that, looking to the nature, terms, and inducements of Myerle's contract with the government, and also to the character of his hemp, it should not have been rejected. The examination made by the inspectors was, probably, not sufficiently thorough. A few bales less thoroughly cleaned than the rest, by falling first under examination, were permitted to cause the whole to be condemned.

From this condemnation of Myerle's hemp at Boston in 1841, and subsequently, amounting in all to near two hundred tons, sprang his grievous loss. The manner of his loss is sufficiently explained by Mr. Holmes' report. Its extent it is difficult to determine. The actual loss in the reduced price of the hemp on hand could not have been less than fifteen thousand dollars, while the loss to his other property, resulting from a withdrawal of his personal attention during the time that he was engaged in this enterprise for the government, and more especially from the overthrow of his credit by the rejection of his hemp, must have amounted to fifty thousand dollars at the least. It is proper to bear in mind that Myerle was forced to incur heavy liabilities in the way of loans, in consequence of his failure to obtain the advances from the government which were promised him by Mr. Paulding. These liabilities, upon a failure of his credit, caused as above stated, fell with crushing weight upon him.

In the uncertainty that hangs about his actual loss, the committee have determined to report a bill so clearly within limits as to recommend itself for its moderation to the closest and most parsimonious. Additional evidence, filed in the case since the former reports, more than sustain the allowance made.

They report a bill for thirty thousand dollars, and recommend its passage.

CAPTAIN J. H. ESTES.

[To accompany J. R. 48.]

JANUARY 21, 1859.

Mr. DAVIDSON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Captain J. H. Estes, "praying compensation for carrying the United States mails from Vicksburg to Ashton, in the State of Louisiana," have had the same under consideration, and beg leave to report :

That in the year eighteen hundred and forty-nine the intermediate post offices between Vicksburg, in the State of Mississippi, and Ashton, in the State of Louisiana, were almost entirely deprived of mail facilities, though located in a rich cotton-growing country, and supplying thickly populated neighborhoods. These offices were : Tallula Court-House, Mississippi ; Brunswick Landing, Mississippi ; Pecan Grove, Louisiana ; Skipwith Landing, Mississippi ; and Ashton, in the State of Louisiana. Thus cut off from the ordinary mail facilities of the country and suffering severely from a want of reliable postal connexion with New Orleans, the great mart of southern trade, the postmasters at the points above named, at the urgent solicitation of the citizens, engaged Captain J. H. Estes, who commanded the steamers Montgomery, Saxon, and Frank Lyon, to supply them with a regular weekly mail, and the certificates of these postmasters show that Captain Estes regularly and faithfully performed the service ; while Mr. Houghton, who was a clerk in the post office at Vicksburg from eighteen hundred and fifty to February, eighteen hundred and fifty-four, certifies that the service as stated was performed with regularity. Mr. J. M. Tyler, who was agent for the boats of Captain Estes, certifies that it was his "duty as agent to deliver the mails on board said boats and receive them on return, which was regularly done."

A petition to Congress, signed by a large number of citizens and by many of the most influential and respectable commercial houses in Louisiana and Mississippi, praying that Captain Estes may be compensated for his laborious services in behalf of the Post Office Department and the people who were accommodated on this route,

accompany claimant's memorial, and in the opinion of your committee places it beyond a doubt that Captain Estes did perform the services as alleged, and that these services were performed at the special request of the postmasters, the agents of the government, and at the urgent solicitation of the several communities which were by Captain Estes supplied with all their mail facilities. Your committee are also aware that all the revenue accruing from this mail service was received and appropriated by the General Post Office Department, while Captain Estes received nothing.

And it is further shown that T. G. Davidson, the representative of the district of country embraced in this service, presented this case to Postmaster General Campbell, who acknowledged the justice of the claim but declined paying it for the want of legal authority; and certificates marked B and C show the claim was presented by Colonel Hunt and A. G. Penn in eighteen hundred and fifty-three and eighteen hundred and fifty-four.

Your committee would also allude to the fact that at the first session of the present Congress they reported a bill for the relief of Captain L. W. Broadwell, who performed this service for two years after Captain Estes gave it up, and this bill was passed and became a law. They now think it but equal justice to allow Captain Estes a fair compensation for the same services, and therefore they report the accompanying resolution, and recommend its passage.

TRUSTEES PRESBYTERIAN CHURCH, YORKTOWN,
NEW YORK.

[To accompany Bill H. R. No. 808.]

JANUARY 21, 1859.

Mr. MAYNARD, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, to whom was referred the petition of the trustees of the Presbyterian church, in Yorktown, Westchester county, in the State of New York, have had the same under consideration, and beg leave to report:

The proof establishes that in 1779 the meeting house and parsonage, with a store house attached thereto, belonging to the said church, were taken possession of and occupied by the regiment of American troops commanded by Colonel Samuel Drake, as barracks for the troops, and for keeping the stores of the regiments; that while so possessed and occupied, they were attacked and burnt by the British troops.

The principle has been repeatedly announced and recognized that "if an enemy, savage or civilized, destroyed property in the military occupation of the United States as a place of offence to said enemy, the government is bound to indemnify the owner of said property thus destroyed, because of its occupation as a place of annoyance." This principle is based, in the language of Mr. Whittlesey, "on the moral obligation to compensate for losses incurred by the destruction of property by the enemy, because its military use had changed its character from private to public property."—(See H. R. 386, March 16, 1832.)

The facts of this case bring it clearly within this principle. The claim has been many years before Congress, and has been considered favorably by various committees; still it has failed to secure a united action of both houses of Congress in its favor, possibly because the claimants, relying upon the manifest justice of the demand, did not think it necessary to have a "friend at court" to advance their interests.

On the 16th of September, 1850, Mr. Nelson, from this committee, introduced a bill with a report, embodying the testimony.—(See H. R. 492, 1st session, 31st Congress.) That bill appropriated \$3,500, the sum that the said buildings are proved to have been worth at the time of their destruction, without allowing interest.

Believing the claim to be eminently well founded, your committee herewith report a similar bill, and recommend its passage.

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A. C. DAVENPORT.

[To accompany Bill H. R. No. 809.]

JANUARY 21, 1859.

Mr. MOORE, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Archibald C. Davenport, of the city of Savannah, and State of Georgia, having had the same under consideration, beg leave to report :

The proof shows that during the prevalence of the yellow fever in Savannah, in 1854, the collector of that port was absent from said city by permission of the Secretary of the Treasury ; that the deputy collector was stricken down by the prevailing epidemic, and so were also the clerks in the custom-house at that place ; that many had left this doomed city, and those who remained, did so at the imminent hazard of their lives. That it was at this time difficult to procure the services of clerks at even the most exorbitant prices—daily laborers commanding as high as ten dollars per diem. That all the business connected with the custom-house at that place would have been suspended had not petitioner consented, at the request of the deputy collector, to undertake to discharge such duties as were ordinarily devolved on the collector, deputy collector, and clerks in said custom-house. But petitioner having had considerable experience in said office, did consent to enter upon the discharge of said duties, and so continued for the space of two months. For these extraordinary services, the undersigned deem the petitioner justly entitled to reasonable compensation, and they therefore report a bill granting him the sum of one thousand dollars, in full satisfaction therefor, and unanimously recommend its passage.

J. C. FERRY.

[To accompany Bill H. R. No. 811.]

JANUARY 21, 1859.

Mr. SCOTT, from the Committee on the Post Office and Post Roads, made the following

REPORT.

The Committee on the Post Office and Post Roads, to whom was referred the petition of J. C. Ferry, praying for pay for carrying the mail for one quarter from Pittsburg to Franklin, report:

That it appears from the representations made and set forth in the petition of J. C. Ferry, that the said Ferry entered into a contract with the Post Office Department to carry the mail in two-horse coaches from Pittsburg to Franklin, a distance of seventy miles, daily, for the sum of \$1,596 per year, commencing on the 1st of July, 1852, and that said Ferry continued to carry the mail agreeably to contract until the 15th of December following. Subsequently it appears that the schedule was altered from thirty-six to twenty-four hours by the Post Office Department, thus compelling the contractor Ferry to travel in the night, much to his annoyance and inconvenience, and rendering it almost impossible for the said Ferry to perform the service without an increase of compensation, as the mail under the change, as alleged by the said contractor, would be nearly twice as much as it would be under the original contract.

The foregoing is about the sum and substance of the petitioner's prayer, and to establish the truth and validity of the statements and allegations contained in the petition of the petitioner is a communication from Wm. H. Dundas, Second Assistant Postmaster General, dated April 15, 1858. In this communication it is conceded that the department changed the schedule, thus making the labor to be performed by said contractor more arduous and laborious than it was under the original contract. Mr. Dundas further states in said communication, in regard to the application of Ferry to have "all fines remitted that had been imposed after the commencement of service by the night schedule, which was from the 1st December, 1852, and to be allowed full compensation up to the 1st April, 1854, when service commenced under the new contract," that "although fully satisfied as to the justice of the application, yet the Postmaster General had no legal power to grant the relief asked by the petitioner."

Your committee, believing that the department had no right to alter or change the original contract to the prejudice and injury of the said contractor, Ferry, and that the prayer contained in his petition is a just and equitable one, recommend that the last quarter's pay, from the 31st of December, 1854, to the 1st of April, 1855, be allowed said petitioner, amounting to three hundred and ninety-four dollars (\$394) and interest on the same; and for that purpose your committee respectfully report the accompanying bill with this report.

JANUARY 21, 1855.

REPORT

of the Committee on the Post Office and Post Roads, made the following

REPORT

The Committee on the Post Office and Post Roads, to whom was referred the petition of J. C. Ferry, praying for pay for carrying the mail for one quarter from Philadelphia to New York, report:

That it appears from the representations made and set forth in the petition of J. C. Ferry, that the said Ferry entered into a contract with the Post Office Department to carry the mail between New York and Philadelphia at a distance of twenty miles, daily, for the sum of \$1,000 per year, commencing on the 1st of July, 1853, and that said Ferry continued to carry the mail according to contract until the 31st of December following. Subsequently it appears that he was allowed from that date to the 1st of January, 1855, the sum of \$1,000 per year, but that he was not allowed to leave the office of the department, then occupying the contract, to leave the office, much to his annoyance and inconvenience, and rendering it almost impossible for the said Ferry to perform the service without an increase of compensation, as the mail under the contract was allowed to the said contractor, would be nearly twice as much as it would be under the original contract. The report is about the same and substance of the petition, and it is certified the truth and validity of the statements and all matters contained in the petition of the petitioner in a statement made by Wm. H. Donahoe, Second Assistant Postmaster General, dated April 15, 1855. In this communication it is recorded that the department changed the schedule, thus making the labor to be performed by said contractor more arduous and laborious than it was under the original contract. Mr. Donahoe further states in said communication, in regard to the application of Ferry to have "all three quarters" that had been imposed after the termination of service by the right schedule, which was from the 1st of December, 1853, and to be allowed full compensation up to the 1st of April, 1855, when service was resumed under the new contract, that "although daily satisfied as to the justice of the application, yet the Postmaster General had no legal power to grant the relief asked by the petitioner."

CERTAIN PRIVATE LAND CLAIMS IN MISSOURI.

[To accompany bill H. R. 681.]

JANUARY 21, 1859.

Mr. BLAIR, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred a bill declaratory of the meaning of a clause contained in the second section of an act entitled "An act to provide for the location of certain confirmed private land claims in the State of Missouri, and for other purposes," approved June 2, 1858, report:

That persons claiming to be entitled to pre-emptive rights on the lands of the United States, can maintain no action at law in the courts of the country, until their rights have been passed upon and admitted by the proper officers of the government; and, as by the aforesaid act of the last session, all the rights of the government were relinquished in favor of certain parties, to the lands therein referred to, reserving "to all adverse claimants the right to assert the validity of their claims in a court or courts of justice;" it is believed by your committee that settlers who were on any of said lands, and who, but for the said relinquishment by the United States, would or might have established a pre-emptive right thereto, should be authorized to maintain a suit at law to test the validity of the rights of adverse claimants; and therefore report back the bill referred to them without amendment, and ask its adoption.

ALMON W. BABBITT—ADMINISTRATOR OF.

[To accompany Bill H. R. 814.]

JANUARY 21, 1859.

Mr. LEITER, from the Committee on Indian Affairs, made the following

R E P O R T .

The Committee on Indian Affairs, to whom was referred the memorial of Joseph E. Johnson, asking payment to heirs of Almon W. Babbitt late Secretary of Utah, for losses by the Indians, &c., report:

Your committee find that Almon W. Babbitt was murdered by the Indians as represented in the memorial of the said Johnson, and that a large amount of money and property belonging to said Babbitt was stolen by the Indians, but from the evidence before your committee they are unable to state the amount. Your committee are unanimously of opinion that the memorialist is entitled to relief, and therefore report a bill authorizing the First Comptroller of the Treasury to ascertain and determine the amount and value of any money and property belonging to the United States, and to said Almon Babbitt, which may have been lost and destroyed by an attack of the Indians upon the train of said Babbitt, and to pass the amount so ascertained to his credit, and if any balance remain after paying the amount due the United States, it be certified by said Comptroller, to be paid to the lawful heirs of said Babbitt, deceased.

JOHN JOHNSON.

[To accompany Bill H. R. No. 815.]

JANUARY 21, 1859.

Mr. LEITER, from the Committee on Indian Affairs, made the following

R E P O R T .

The Committee on Indian Affairs, to whom was submitted the petition of John Johnson, of the State of Ohio, now submit the following report:

The petitioner, Colonel John Johnson, was appointed Indian agent for the United States amongst the Shawnee Indians, in the year 1818. Including services rendered in a similar capacity amongst the Delawares, Senecas, and Wyandots, by the order of the Secretary of War; he served as agent till the year 1829, making a period of *eleven* years. During all this service, Colonel Johnson, as is abundantly shown, conducted himself in a manner highly satisfactory to the government, and was esteemed as a most valuable officer. His great influence with the several Indian tribes with whom he held intercourse, added to his familiarity with frontier life, enabled him to render essential service to the government. And this service has been acknowledged in almost every form of testimonial which could be furnished, by some of the most distinguished of our public men who were in a condition to form a correct appreciation of his character.

The 9th article of the treaty of September 29, 1817, made with the Wyandot and other Indian tribes, provided that the United States should "appoint an agent to reside among or near the Wyandots," who should also "execute the same duties for the Senecas and Delawares on the Sandusky river." It also provided for the appointment of an agent for the Shawnees, whose agency should include the reservations at Wapaghknetta, at Lewiston, at Hog creek, and at Blanchard's creek.

By act of Congress, March 3, 1819, the appointment of these *two* agents was provided for—*each* of whom was to receive a salary of \$1,200 a year. Colonel Johnson, however, was the only agent appointed, and the services of both agencies were fully performed by him. But he was only paid one salary, that is \$1,200 a year during his service. The remaining appropriation was not drawn from the treasury, inasmuch as it was deemed by the Secretary of War, who then had a general jurisdiction over Indian affairs, inexpedient to pay more than one salary to the same officer, notwithstanding the performance of such extra duties as those imposed upon Colonel Johnson.

As agent for the Shawnees his salary was paid him, and he now asks in the petition referred to the committee, that he be paid an additional sum of \$1,200 a year for his services rendered as agent for the Wyandots, during the eleven years of his Shawnee agency.

The committee do not think this claim should be allowed. They think it would establish a bad precedent and lead to much and dangerous abuse. They, however, at the same time think that Colonel Johnson should not go unrewarded for the important services performed for the government during the time that these onerous and double duties were imposed upon him by the Secretary of War. It appears by the accounts of disbursements rendered by Colonel Johnson, that during the eleven years of his service, he paid out to and for the use of the Wyandot Indians the sum of \$307,582 72. When it is considered that he resided at some distance from the place where this money was disbursed, and the great difficulties in transporting such large sums of money in the portions of Ohio where these Indians resided between the years 1818 and 1829, and when it is also considered that he discharged the duty of making these large disbursements honestly and faithfully, and wholly without remuneration, the committee are of opinion that he should be now paid a liberal and just compensation therefor. This they think would be a commission of two and a half *per cent.* upon the aggregate sum disbursed by him, or \$7,689 56, which in their opinion should be allowed him.

While Colonel Johnson was engaged in rendering the services already enumerated amongst the Shawnees, Wyandots, and Seneca Indians, he was instructed by Mr. Calhoun, as Secretary of War, to act also as agent for the Delaware Indians, who then resided in Indiana, about two hundred miles from the residence of Colonel Johnson in Ohio. The letter of Mr. Calhoun is dated March 9, 1819, and contains the following paragraph, to wit :

“ You are also requested to act as agent for the Delawares, until their removal west of the Mississippi conformably to the treaty concluded with them at St. Mary's, in Ohio, on the 3d of October, 1818.”

The duties thus imposed upon Colonel Johnson were performed by him, and subjected him to much inconvenience and, doubtless, to some expense in consequence of the distance he was compelled to travel. They continued from the time of the appointment by Mr. Calhoun till the Delawares were removed west of the Mississippi, that is, for a period of *five* years. Colonel Johnson has made only a charge of \$300 per year for this service, and the committee think it a just and reasonable one, and that it should be allowed—\$1,500 being the aggregate allowance for the whole service.

During the time of the service of Colonel Johnson as agent, and in consequence of his position upon the extreme frontier, removed from the immediate vicinity of any military post, he was exposed to great annoyances and subjected to great expense in consequence of the frequent visits of the Indians to his home. During these visits, with their interpreters and others who accompanied them, they had to be entertained, and they and their horses fed at his private expense, as there was no fund set apart for that purpose. Colonel

Johnson states, and the committee have no reason to doubt it, that for similar expenses and annoyances during the administration of Mr. Jefferson he was allowed *one dollar* per day. But he has not charged so much for these services, being now content to receive \$150 per year for the eleven years of his service, or an aggregate sum of \$1,650. The committee think this also a just and reasonable charge, which should be allowed; and they are confirmed in this view of it by the fact that General Cass, who was, during the time, Superintendent of Indian Affairs, and had a knowledge of the expenses to which Colonel Johnson must have been subjected, when Colonel Johnson's account was submitted to him in 1829, certified that the account, in his opinion, was "*true and the charge reasonable.*"

The foregoing are all the items embraced in the petition of Colonel Johnson and the account accompanying it, the allowance of which the committee have deemed it expedient to recommend. He asks compensation for discounts paid by him on public drafts in 1812, '13, and '14, during the monetary embarrassments of those years. But the committee do not think this should be paid, for the reason that it is supported alone by the statement of Colonel Johnson. And so also of a charge for damages, expenses, and protests on bills of exchange drawn by him on the Secretary of War for money for the public service, and of another charge for provisions furnished to Indians.

The committee are not inclined to question, in any degree, the integrity and veracity of Colonel Johnson, but think that it would be a very bad and dangerous precedent, which might lead to immense impositions upon the government, to allow the payment of money out of the treasury upon the unsupported statement of the party who was to receive it. For this reason they think these last items of charge should not be allowed.

Colonel Johnson asks to be paid *interest* upon the amount paid by him for discount on drafts, damages, expenses, and protests of bills. But as the committee have not deemed it expedient to recommend the payment of the *principal* of these charges, there can be no possible claim for interest. It may not be out of place, however, for the committee to say upon this subject that, in their opinion, interest should never be paid by the United States upon any claim of a character similar to this. Although adherence to this rule may work occasional injury to particular individuals, yet a departure from it would accumulate the indebtedness of the government to a ruinous extent.

The committee, therefore, by way of recapitulation, will state that they have allowed commissions for disbursement of \$307,582 72, amounting to \$7,689 56. Also \$1,500 for the services performed as Delaware agent, by order of Mr. Calhoun, Secretary of War; and \$1,650 for feeding Indians, &c., as certified by General Cass. These sums make an aggregate of \$10,839 50, for the payment of which sum they report a bill, with a recommendation that it do pass.

ISRAEL JOHNSON.

[To accompany Bill H. R. No. 817.]

JANUARY 21, 1859.

Mr. COLFAX, from the Committee on Indian Affairs, made the following

R E P O R T .

The Committee on Indian Affairs, to whom was referred the petition of Israel Johnson, of Cass county, Indiana, with accompanying evidence, respectfully report:

That it appears from the sworn evidence submitted that, at the attempted treaty with the Miami tribe of Indians, in the year 1833, at the forks of the Wabash, the said Johnson, at the request and under the direction of General Wm. Marshall and General Nicholas D. Grover, Indian agents, hauled from Logansport to said treaty ground, three loads of baggage and provisions for the United States, for which he was to receive from the United States forty-five dollars per load, making \$135. That he also hauled, by the orders of said agents, one load of baggage from the treaty ground to the payment ground of the Pottawatomies, on the Tippecanoe river, for which he was likewise to receive forty-five dollars.

That, while the said Indians were in council, he also, by the direction of the said agents, gave a public dinner to the chiefs and head men of the Pottawatomies, to promote the efforts to induce them to treat, for which he was to receive seventy-five dollars.

That he was also employed by said agents to transport six boys of the Pottawatomie tribe to Madison, on the way to the Choctaw Academy, in Kentucky, for which, on behalf of the United States, they agreed to pay him one hundred dollars.

He also sets forth that, by the direction of said Indian agents, being a hotel keeper at Logansport, he entertained and kept a large number of Indians and their horses, for some time prior to said attempted treaty, for which he charges two hundred and twenty dollars.

His whole claim thus amounts to five hundred and seventy-five dollars. But the last item above specified for entertainment of the Indians prior to the treaty, is regarded by the committee as not being as much within the equity of the case against the United States, as the other charges, although doubtless furnished by Mr. Johnson in good faith. Deducting that, would leave three hundred and fifty-five dollars,

which we consider equitably due to the petitioner, having been authorized and requested by the officers of the United States, and all incidental to the formation of an important treaty with the Indians.

The rendition of these services and the reasonable character of the charges are both supported by abundant testimony. General Grover, one of the agents who requested their performance, thus testifies and further declares that, "having been sub-agent or agent during the treaties by which most of the lands in northern Indiana were purchased of the Indians, the same power was authorized and exercised for expenses of this character." The testimony of Hon. Chauncey Carter, Hon. J. W. Wright, J. B. Duret, and J. Vigus, esqs., amongst the oldest citizens of Logansport, who were cognizant of these services being performed, that they were authorized, and that the charges are reasonable, also accompany and corroborate the petition before the committee.

While other allowances of a similar character for services at the same time, were allowed by the War Department, this claim was omitted through the negligence of General Marshall, the chief agent and commissioner. On the failure of the treaty, the accounts were hurriedly made up during the night following, and the treaty ground abandoned early the next morning. Mr. Johnson was at that very time absent, hauling a load for the United States to the Pottawatomie payment ground, and being out of sight was forgotten in the hurry of the hour. General Grover, in his affidavit, explains this by allusion to the well known carelessness, in the matter of accounts, of his superior.

It appears also from the evidence that the reason why the claim has been so long pending, is as follows: After Mr. Johnson found that his claim had not been certified, he appealed to General Marshall, who had ordered the services, to pay it himself, which he consented to do when he received money from Washington to pay the expenses; that after waiting a year and in vain, Marshall then said he would have to certify it before it could be paid, which he then did in a book, although out of office and the book itself was lost by an attorney employed by Johnson and could not be found after the attorney's decease. Up to 1845, Johnson supposed Marshall would have to pay it himself, Marshall asking him to take trade for it which he consented to do but could never obtain.

Since that time, his claim has been pending before Congress. It has been twice reported favorably, in the Senate, and in the House, by their committees of Indian Affairs, and in 1854 a bill for his relief passed the Senate, but failed to be reached in the House. The committee therefore recommend the passage of the accompanying bill, as equitable and just, having reduced the claim to three hundred and thirty-five dollars.

UNADJUSTED DIFFERENCES WITH THE GOVERNMENT OF SPAIN.

[To accompany Bill H. R. No. 678.]

JANUARY 24, 1859.

Mr. BRANCH, from the Committee on Foreign Affairs, proposes at a proper time to submit the following

REPORT.

The Committee on Foreign Affairs, to whom were referred House Bill, No. 678, "A bill appropriating money to enable the President to settle unadjusted differences with the government of Spain, and for other purposes;" and also House Bill No. 684, "A bill authorizing the President to obtain a loan of money for a certain purpose," have had the same under consideration and now report:

At the close of their struggle with Great Britain for independence, the United States possessed no territory on the Gulf of Mexico, their southern boundary being nearly coincident with the present northern boundary of Florida, extended to its intersection with the Mississippi river at 31° of north latitude.

The Mississippi river, then their western boundary, was far west of the extreme frontier settlements, and their productions being entirely east of the Alleghanies, commerce needed no ports except on the Atlantic seaboard.

In 1795 Spain held all the shores of the Gulf; but in 1800 ceded Louisiana, from the Perdido to the Sabine, to France.

After the close of the war of independence our settlements spread westward, and the rich valley between the Alleghanies and the Mississippi soon received a hardy and enterprising population, under whose industry its fertile soil and unequalled resources were beginning to furnish material for an incalculable commerce. This commerce necessarily sought the ocean through the Mississippi, and as the mouth of the river was in possession, first, of Spain, and afterwards of France, jealousy and ill-feeling were engendered between friendly nations, constantly threatening hostile collisions, against which the prudence of rulers could furnish no guaranty.

Napoleon Bonaparte, who was then at the head of the French nation, is known to have cherished no policy more ardently than that

of building up for France a commerce that should rival that of England; and though fully alive to the importance of Louisiana as a means toward accomplishing this object, he did not hesitate, in 1803, to cede it to us for the sake of preserving amicable relations between the two nations. He well knew that every consideration of justice demanded of him the cession, and that the pride and obstinacy of rulers ought not to stand in the way of the prosperity of large bodies of the human race. He also knew that however solicitous this government might be to restrain its citizens from aggressions, it was not possible for it to do so under circumstances so well calculated to invite them. If Napoleon had been less a statesman and had attempted to block up the mouth of the Mississippi, it cannot be doubted that long and bloody wars between France and the United States would have ensued, and that Louisiana would have been added to our Union at an enormous expense of blood and treasure.

By the acquisition of Louisiana we became one of the powers of the Gulf of Mexico, and by the subsequent purchase of Florida from Spain and the annexation of Texas we have become the paramount power, having the unquestionable right to demand that on its waters and around its borders our peace and prosperity shall not be interrupted or endangered. Around it our social and political institutions prevail, and on it floats the commerce of fifteen States of the confederacy. No other commerce worth mentioning is found there except ours, and we have a right to regard it, in all matters involving our security, as an inland sea.

Since the acquisition of California, passengers and mails in passing between the Atlantic and Pacific seek a point of transit across the continent where it is narrower than at any point within our territorial limits. There are three points at which it may be conveniently traversed, each presenting some advantage peculiar to itself. The first or most northerly is at the Isthmus of Tehuantepec, within the republic of Mexico; the second in the territory of Nicaragua, and the third at the Isthmus of Panama, in New Granada. It is important to us that all these routes should be kept open, as the competition between rival lines could not fail to be advantageous to our citizens. But the Tehuantepec route, being within the Gulf of Mexico, we had a just right, as the predominant power in the Gulf, to claim a free and exclusive right of way over it for our citizens, mails, and property passing between the Atlantic and Pacific portions of the Union. The government of Mexico, with a clear appreciation of its own interest and a liberal sense of what was due to us, has authorized the construction of a railroad at this point, and by the treaty of the 30th of December, 1853, guaranteed to the United States the full and unrestricted right of transit over it, with the privilege to "extend its protection as it shall judge wise to it when it may feel sanctioned and warranted by the public or international law," and with the further stipulation, "nor shall any interest in said transit way, nor in the proceeds thereof, be transferred to any foreign government." By this liberal and enlightened course on the part of Mexico we have been enabled to secure within the Gulf of Mexico a transit route as

free and in every respect as advantageous to us as if it was within our own limits.

By securing the Tehuantepec transit right we have diverted into the Gulf the coastwise intercourse between the Atlantic and Pacific, and thereby added incalculably to the large commercial interests we already have there.

It will be seen from this brief review that Spain, France, Texas, and Mexico have voluntarily placed us in a position, territorially, on the Gulf which has made it to us almost an inland sea. Having thus voluntarily, and for ample consideration, made its free use a necessity to us, can they justly withhold any additional concessions that experience has shown to be indispensable to our peace and security?

It is worthy of remark that Spain has at all times shown more reluctance to make amicable territorial arrangements with us than any other nation with whom we have been coterminous. Its pride seems only to have revolted against cessions to us, and to have presented no obstacle to cessions to other powers. Louisiana and Florida were time and again transferred and re-transferred between Spain, France, and England, so that it is almost as difficult to trace their history as it is to date the various transfers of a personal chattel. Yet when Florida became indispensable to the security of the United States, and we proposed to purchase it, Spanish pride instantly revolted. Our government so scrupulously respects the territorial rights of neighboring nations, and so honorably discharges all the duties of good neighborhood, that few persons are aware how sorely the patience and forbearance of the generation preceding ours was tried by the obstinacy of the Spanish rulers in regard to Florida. All efforts to purchase it having failed, Congress, in 1811 and 1812, in secret session, passed the following acts, which were not printed and promulgated until after the lapse of several years.

Resolution and acts relative to occupation of the Floridas by the United States of America.

Taking into view the peculiar situation of Spain and her American provinces, and considering the influence which the destiny of the territory adjoining the southern border of the United States may have upon their security, tranquillity, and commerce; therefore—

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States, under the peculiar circumstances of the existing crisis, cannot, without serious inquietude, see any part of the said territory pass into the hands of any foreign power, and that a due regard to their own safety compels them to provide, under certain contingencies, for the temporary occupation of the said territory, they at the same time declare that the said territory shall, in their hands, remain subject to future negotiation.

Approved January 15, 1811.

AN ACT to enable the President of the United States, under certain contingencies, to take possession of the country lying east of the river Perdido and south of the State of Georgia and the Mississippi Territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized to take possession of and occupy all or any part of the territory lying east of the river Perdido and south of the State of Georgia and the Mississippi Territory, in case an arrangement has been or shall be made with the local authority of said territory for delivering up the possession of the same, or any part thereof, to the United States; or, in event of an attempt to occupy the said territory, or any part thereof, by any foreign government; and he may, for the purpose of taking possession and occupying the territory aforesaid, and in order to maintain therein the authority of the United States, employ any part of the army or navy of the United States which may be necessary.

SEC. 2. *And be it further enacted,* That one hundred thousand dollars be appropriated for defraying such expenses as the President may deem necessary for obtaining possession as aforesaid, and the security of the said territory, to be applied, under the direction of the President, out of any money in the treasury not otherwise appropriated.

SEC. 3. *And be it further enacted,* That in case possession of the territory aforesaid shall be obtained by the United States, as aforesaid, that, until other provision be made by Congress, the President be, and he is hereby, authorized to establish within the territory aforesaid a temporary government, and the military, civil, and judicial powers thereof shall be vested in such person and persons, and be exercised in such manner as he may direct, for the protection and maintenance of the inhabitants of the said territory in the full enjoyment of their liberty, property, and religion.

Approved January 15, 1811.

AN ACT concerning an act to enable the President of the United States, under certain contingencies, to take possession of the country lying east of the river Perdido and south of the State of Georgia and the Mississippi Territory, and for other purposes, and the declaration accompanying the same.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act and the act passed during the present session of Congress entitled "An act to enable the President of the United States, under certain contingencies, to take possession of the country lying east of the river Perdido and south of the State of Georgia and the Mississippi Territory, and for other purposes," and the declaration accompanying the same, be not printed or published until the end of the next session of Congress, unless directed by the President of the United States; any law or usage to the contrary notwithstanding.

Approved, March 3, 1811.

AN ACT authorizing the President of the United States to take possession of a tract of country lying south of the Mississippi Territory and west of the river Perdido.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to occupy and hold all that tract of country called West Florida, which lies west of the river Perdido, and now in possession of the United States.

SEC. 2. *And be it further enacted,* That for the purpose of occupying and holding the country aforesaid, and of affording protection to the inhabitants thereof, under the authority of the United States, the President may employ such parts of the military and naval force of the United States as he may deem necessary.

SEC. 3. *And be it further enacted,* That, for defraying the necessary expenses, twenty thousand dollars is hereby appropriated, out of any moneys in the treasury not otherwise appropriated, and be applied for that purpose under the direction of the President.

Approved February 12, 1813.

Happily no necessity arose for the exercise by the President of the extraordinary powers conferred on him by these acts, and they became obsolete on the subsequent acquisition of Florida by the treaty of 22d of February, 1819.

It is a fact of some significance that these acts and resolutions were for the first time published and promulgated with the laws, pending the negotiation of the treaty for the cession of Florida.

Even after the treaty had been signed by the plenipotentiaries of the contracting parties, the Spanish government withheld its ratification on frivolous pretences, until the 24th of October, 1820, nearly two years, and so completely had the patience and forbearance of our government been exhausted that President Monroe, in his annual message of December, 1819, brought the subject to the attention of Congress, and said: "From a full view of all the circumstances, it is submitted to Congress whether it will not be proper for the United States to carry the conditions of the treaty into effect, in the same manner as if it had been ratified by Spain; claiming, on their part, all its advantages, and yielding to Spain those secured to her."

From these legislative and executive manifestations, immediately preceding and succeeding our last war with England, we might deduce an example which we do not follow, because we may now safely repose on the conviction that our power is adequate to our protection under any emergency.

Of the immense colonial possessions once held by Spain in this quarter of the globe, none remain under her authority except the islands of Cuba and Porto Rico. To her they are distant and expensive appendages, in no way connected with or participating in her government, adding nothing to her power, and held solely for the advantages derivable to the mother country from a monopoly of their trade. Though the inhabitants of Cuba are probably more heavily

taxed than any other population in the world—eight hundred thousand free persons, of whom two hundred thousand are free negroes, paying more than twenty-three millions of dollars per annum—yet Spain derives little or no advantage from the revenue, it being absorbed in the support of nearly 25,000 peninsular troops and a numerous navy, on and around the island, to keep it in subjection. Whilst Spain held large colonies on the main land of the continent, especially whilst Mexico, Texas, Louisiana, and Florida were under its rule, Cuba was important to her as a commercial entrepot, and also as a military outpost from which were fitted out her expeditions to Mexico and Central and South America. Its importance in that respect seems to have been appreciated by her and recognized by other nations; for whilst Louisiana and Florida repeatedly changed sovereigns, Cuba never has from the time the Spanish flag was planted upon it by Columbus in 1492, except for a short time, during which Great Britain held it by conquest. Its value to Spain, in this respect, has entirely ceased, and it has become of even greater importance to us as her successors in Florida, Louisiana, and Texas. Our rights and obligations in reference to the Gulf and the nations lying around it, to which the committee has already adverted, demand that the island of Cuba should constitute a State of our confederacy, bound to us not only by a common constitution, but by the bonds of mutual interest, and side by side with the sister States of the Union, aiding to place under our flag the richest and freest commerce the world has ever seen.

Its importance to our national security, and for the protection of our foreign and coastwise commerce, will be perceived from considerations which we will briefly present.

Into the Gulf of Mexico empty all the rivers of Texas, the Mississippi and its tributaries, all the rivers of Alabama, and a portion of those of Georgia and Florida, furnishing 25,000 miles of inland navigation and bearing towards the markets of the world the surplus productions of fifteen of the most fertile States in the Union. The trade of the ports in the Gulf may be set down at two hundred millions of dollars per annum, as follows:

Exports of domestic produce to foreign countries (official)	\$113,541,367 00
Imports from foreign countries (official)	19,703,870 00
Exports coastwise (estimated)	20,000,000 00
Imports coastwise (estimated)	47,000,000 00

No one can doubt that these figures are much lower than might safely be assumed, and that within a very few years the same trade will amount to five hundred millions of dollars, independently of the trade with California over the Tehuantepec route, which baffles all computation.

The Gulf into which all this trade is annually poured is in the form of a distended bag, its contracted mouth being presented towards the Atlantic ocean. All vessels going into or out of it must pass through this mouth, and just between the headlands of Florida and Yucatan, which form the mouth, is situated the island of Cuba. An enemy's

fleet lying in its harbors, and cruising in the narrow straits which separate it from Florida on one side and Yucatan on the other, could effectually close the gates of the Gulf and lock in the whole trade of the valley of the Mississippi.

When France was in possession of Louisiana the commerce of the Mississippi was little more at its mercy than it is now at the mercy of Spain and her allies. By our treaty of peace with Great Britain in 1782 we were entitled to the free navigation of that river from its source to its mouth, and we could maintain our right so long as we had a preponderance on land, although both banks near the mouth were in the hands of a foreign power; but now we are secure only so long as we maintain a naval superiority over Spain and all the allies she may array against us. If the solicitude of our fathers to remove foreign powers from the banks of the Mississippi because they might interrupt its navigation was well founded, it is amazing that there should not be greater solicitude on the part of their children to remove Spain from the mouth of the Gulf. Taking into account the growth of our western States and the vast increase of their productions, the acquisition of Cuba must be far more important to them now than that of Louisiana was in 1803.

Owing to adverse currents, intricate channels, and other causes controlling the movements of mariners, the majority of vessels navigating between the Gulf and the Atlantic seaboard pass to the southward of the island of Cuba, and the island, therefore, bears the same relation to the track of our navigators that Florida would bear to it if they could pass to the north of the island. It is, practically, the salient point of the Florida peninsula; and, defensively, the Florida cape is of no more value to us than a position on the northern border of the Everglades, because there is a much stronger position in advance of it held adversely.

Nothing can be more irritating to an independent and spirited nation, or better calculated to precipitate collisions, than to have such vast and delicate interests as our most important coastwise intercourse compelled to pass almost within hail of foreign fortifications, and to run the gauntlet of alien fleets. Hence, our relations with Spain are constantly of a semi-hostile character, and our minister at Madrid can do little else than wrangle with the government to which he is accredited about high-handed outrages and petty grievances inflicted upon our citizens, which Spanish officials in Cuba are armed with full power to inflict but none to redress.

The following list of unredressed cases, pending in 1854, resembles more the criminal docket of a county court than the portfolio of a minister plenipotentiary:

1. The barque Zulette.
2. Claim of the heirs of Alexander D. Harang.
3. The barque Godefroy.
4. Imprisonment of Mr. West.
5. Shipwreck of the North Carolina.
6. Prisoners taken at Contoy.
7. The Crescent City.

8. Schooner Manchester.
9. Firing, with ball, at the Black Warrior.
10. Seizure and detention of the Black Warrior.
11. A large number of claims arising out of the irregular repeal of an order admitting grain and timber free of duty.
12. Reclamations for port and navigation duties improperly exacted.

If some of these cases have been settled since 1854, others have been added to the docket; and it is not likely that it will be reduced whilst our present relations to the island are maintained.

If Long Island was in possession of a foreign power, and the morning gun from its bristling fortifications could be heard in our great commercial metropolis, would it not be the signal to battle? How long could a foreign flag float there, whether defended by twenty-five thousand or thrice twenty-five thousand troops? What government here could keep the peace with the intruder? Our government has kept the peace with Spain, and its ability to do so is proof of our scrupulous respect for the rights of others and of the obedience of our western and southwestern citizens to law and the constituted authorities. It is well known that large bodies of men in the United States have been eager to assail the Spanish power in the West Indies, and have only been restrained by the stern mandates of their own government. They have passed and repassed, in peace and in war; once, when returning flushed with victory, and armed with the weapons that had wrested from Mexico indemnity for wrongs no greater than have been inflicted on us by Spain. More recently our squadrons have passed, to avenge on Paraguay an insult to the flag. Yet what has Paraguay done, comparable to the insults that we have more than once received in Cuba?

Under any circumstances, the geographical position of Cuba would render it a source of annoyance and irritation to us, so long as it remains in the hands of a foreign power, and it would constantly disturb our friendly relations with its possessor. But the Spanish government has never seemed desirous to render it as little so as possible. It will neither guard against wrongs to us nor redress them. The President says :

“Whilst the captain general of Cuba is invested with general despotic authority in the government of that island, the power is withheld from him to examine and redress wrongs committed by officials under his control on citizens of the United States. Instead of making our complaints directly to him at Havana, we are obliged to present them through our minister at Madrid. These are then referred back to the captain general for information, and much time is thus consumed in preliminary investigations and correspondence between Madrid and Cuba, before the Spanish government will consent to proceed to negotiation.”

The committee entirely concur with the President in the following sentiments :

“It has been made known to the world by my predecessors that the United States have, on several occasions, endeavored to acquire

Cuba from Spain by honorable negotiations. * * We would not, if we could, acquire Cuba in any other manner. This is due to our national character. All the territory which we have acquired since the origin of the government has been by fair purchase from France, Spain, and Mexico, or by the free and voluntary act of the independent State of Texas, in blending her destinies with our own. This course we shall ever pursue, unless circumstances should occur, which we do not now anticipate, rendering a departure from it clearly justifiable under the imperative and overruling law of self-preservation."

The attempts to acquire it, alluded to by the President, have been made by the Executive without the express sanction of Congress, though it is not doubted that they have met its hearty approbation and that of the American people. Perhaps a proposition made with the express sanction of Congress may receive a more favorable consideration from the Spanish government. Until such a proposition has been made and rejected we ought not to consider "honorable negotiation" exhausted, nor would it be proper to discuss what course would be demanded of us "under the imperative and overruling law of self-preservation." It is certain that the Executive will take, and Congress will sanction, no step which will not be sanctioned by the practices, if not by the public sentiment, of all civilized nations.

In addition to commercial privileges for a limited time in the ports of Cuba, similar to those granted to Spain in the ports of Florida, and to France in those of Louisiana, and even greater privileges if Spain should desire them, the United States could afford to pay an equivalent in money for the change of flags. It is true that the principal pecuniary gain from the acquisition would enure to those classes of our citizens engaged in commerce, navigation and manufactures, on whom the taxation to pay the equivalent would fall with the least weight, but the producing classes also would be largely benefitted, and it is not doubted that, in consideration of the political and commercial advantages to the whole nation, they would cheerfully bear their proportion of the burden.

No prospect of pecuniary gain could induce the people of the United States to sanction an act of wrong, and no arguments will ever be necessary to reconcile them to pay the cost of national security. But as the sum proposed to be appropriated is large, and the people under our government demand, and have the right to receive, from the representative body full explanations as to every legislative act, it is our duty to lay before the House the information which has guided us in settling the amount of appropriation recommended.

The committee, therefore, present to the House statistical facts, drawn from official and reliable sources, showing the advantages which may be expected to result from the acquisition to the leading industrial interests of our country:

1. To the agricultural.
2. To the manufacturing.
3. To the navigation.
4. To the commercial.

Most of the facts are drawn from the official report on the "Com-

mercial Relations of the United States with all Nations," prepared at the State Department and published by order of Congress, and where a due regard to brevity will permit the language of that report will be adopted.

1. The advantage to our agricultural classes would be two-fold:

First. Of articles used mainly by them we imported from Cuba in 1858 as follows: Molasses, \$3,051,156; sugar, \$15,555,409.

On these articles an export duty was collected by the

Spanish government of.....	\$750,000 00
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An import duty of 24 per cent. was collected by the

United States	4,465,575 00
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Tax on sugar imported from other countries, which

would come from Cuba free	1,130,609 00
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Total	6,346,184 00
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But this does not exhibit the whole saving. So long as the domestic production of these articles is less than the consumption the import duty of 24 per cent. levied by this government enables the domestic producer to exact 24 per cent. more than he could get if the foreign article was not enhanced in price by the duty. It is clear that if the duty was taken off, so that Cuban sugar and molasses could be bought 24 per cent. cheaper, the Louisiana produce would also be sold 24 per cent. cheaper, or not at all. This amounts to about \$8,000,000 per annum, on which 24 per cent. amounts to \$1,920,000, making an aggregate annual saving on sugar and molasses, mainly to the agricultural classes, of \$8,266,184. On the importation of 1857 the saving would have been over \$15,000,000.

A superficial observer may say that this saving will constitute no real gain, because if the government is deprived of the revenue it now derives from sugar and molasses, it must levy an equal amount upon some other article consumed by the same class.

This view is by no means correct, for when our revenue system is extended over Cuba its citizens will pay into the treasury an amount averaging under our present tariff about 20 cent. on all their foreign importations. It is not possible to estimate what this may be.

Second. By opening the island to the introduction of our agricultural productions free of duty the acquisition would furnish to that class a large and most important market for their surplus.

Breadstuffs and provisions generally, of which we raise so bountiful a supply, are produced to a very small extent in Cuba, and yet, owing to the discriminating duties and onerous charges and restrictions imposed by the Spanish government, we are unable to supply to our nearest neighbors what we have in such superabundance and they so much need.

"The duty in Cuba on flour imported from Spain is \$2 50, on that imported from the United States in American or other foreign bottoms it is \$10 81, the effect of which is to drive the American article entirely from the Cuban market, except at such times as when scarcity may have carried it up to a famine point.

“Were the discriminations removed flour would unquestionably become our leading staple export to Cuba.

“The most moderate estimate places the consumption of flour, were it admitted at reasonable duties, at from 800,000 to 900,000 barrels. That this trade would be enjoyed almost exclusively by the United States is evident from the fact that flour is amongst our heaviest articles of export, and European competition with a country within a few days sail of the island would be out of the question.”—(Comm. Rel., vol. 1, p. 182.)

From the single article of flour the agriculturists of this country would realize at least five million of dollars per annum. At present they sell none to Cuba.

“Lard, an article of great consumption in Cuba, imported almost exclusively from the United States, is subject to a duty of $4\frac{1}{2}$ cents per pound, when brought from this country in American bottoms; the coarser qualities of oil, (olive,) which are imported for the same purposes, are delivered with a duty of $2\frac{4}{5}$ cents per pound, and the result is that 10,000,000 pounds of lard, being a vastly superior article, are imported, while 8,500,000 pounds of oil from other countries, far inferior to lard, are enabled to compete with it in the markets of Cuba, because of the difference in price in its favor produced by the duty.”—(Comm. Rel., vol. 1, p. 183.)

“Meats.—The existence of a differential duty on meats imported in Spanish bottoms draws the supply of this article in the markets of Cuba from Buenos Ayres to the extent of 30,000,000 of pounds annually; while from the United States it comes to a very limited extent, notwithstanding the quality of the article imported from the United States is far superior to that from South America.”—(*Ib.* 183.)

The removal of the discriminating duties referred to would open a market for 38,500,000 pounds of our meats and lard, without adding anything for the increased consumption which may be expected to result from the superior quality and cheaper price of the article we would furnish. At ten cents per pound, this would give to our agriculturists \$3,800,000, where now they get nothing.

Similar statements might be made in reference to Indian corn, rice, and other articles of food, of which our farmers produce a large surplus, much of which is wastefully consumed because there is no accessible market for its sale, and all of which is reduced in value because the demand is unequal to the supply in those markets which are accessible.

In 1854 the island imported articles of subsistence to the value of \$19,000,000, all of which, under free trade, would be furnished by us.

Enough has been stated from official sources alone, without exaggeration, and without additions which might be legitimately made, to show that the acquisition of the island would promote, in a wonderful degree, the prosperity of our agricultural classes. The sugar planters of Louisiana might find their profits somewhat curtailed. But it must not be forgotten that the first attempts to produce sugar in Louisiana resulted in such signal failures that the business was abandoned, and for a great many years the soil and climate were re-

garded as altogether unsuited to its production. Circumstances having caused a renewal of the attempt, perseverance and skill finally established it as a lucrative and apparently a permanent business. But of late years serious apprehensions have been entertained that it is about to be blighted again, and that, perhaps, in a very few years, our whole supply of sugar from that source may be cut off by uncontrollable natural causes. Fortunately, the soil and climate are well adapted to the production of cotton, and the most serious disaster that can befall the planter is the necessity of transferring his capital from the production of sugar to that of cotton.

Congress has always manifested a great desire that we should be independent of foreign nations for our supply of sugar, and with a view to protect and foster the production of it at home heavy duties have been imposed on the foreign article. Although the consumers have borne this heavy burden for many years, the increase of production has not kept pace with the increase of consumption. The amount produced at home has scarcely in any one year equalled half the consumption, while in 1855 it was barely a third, in 1856 only a tenth; 1857, about an eighth.

Table compiled from statistics contained in Homans' Cyclopedia of Commerce.

SUGAR.

Years.	Total produced in Louisiana.	Total consumed in United States.
	<i>Pounds.</i>	<i>Pounds.</i>
1850.....	231,194,000	435,736,629
1853.....	495,156,000	927,424,644
1854.....	385,726,000	863,067,520
1855.....	254,569,000	671,427,000
1856.....	81,373,000	848,422,400
1857.....	87,360,000	628,913,600

The importation for the year 1858 was 519,036,256 pounds. No means are at hand for ascertaining the production in Louisiana.

Homans' table has been compared with Champonier's report, and no variance is found prejudicial to Louisiana.

These facts and figures show conclusively (and none more regret it than the committee) that Louisiana cannot supply our wants, and must prepare for the free importation of sugar from other quarters; as it cannot be supposed that the consumers—our entire population—will consent to be taxed much longer on an article of universal consumption and almost a necessary of life, for a purpose which it is obvious cannot be accomplished. The only feasible plan for the attainment of so long cherished an object,—independence of foreign countries for our sugar,—is by the introduction of Cuba into the Union. Louisiana has on all occasions shown a patriotic devotion to the interest of the whole Union, and having had the liberal aid of

the government towards the developement of her full sugar producing capacity, will no doubt surrender it without a murmur when it is certain that she has not the capacity to supply the demand, and that the protection she enjoys is simply a tax of 24 per cent. on the whole sugar consumption of the Union, for the benefit of her few sugar planters.

2. The benefits to the manufacturers. No nation in Europe has clung with so much pertinacity to the self-aggrandizing colonial policy as Spain. Others have sometimes relaxed their colonial restrictions when relaxation seemed necessary to the maintenance of their dominion. Spain, on the contrary, has lost her whole colonial empire except Cuba and Porto Rico, because her pride revolted at any concessions. Whilst she held sway over almost all the gold and silver mines in the world, she vainly strove to dry up the life blood of the wealth of the world, and to prevent its diffusion beyond her own borders by prohibiting the exportation of the precious metals. Such absurd folly was only not mischievous because it was impotent.

An official publication says:

"The restrictive policy of Spain, especially as regards the trade of her colonies, is adhered to to-day, in Cuba and Porto Rico, almost as rigorously as when she was mistress of nearly the entire southern portion of this continent. * * * Until the system itself is abolished, and Spain adopts the more liberal commercial policy which characterizes the present enlightened age—until she follows the example of Great Britain, Belgium, Holland, and other neighboring countries in removing all unnecessary shackles from commercial enterprise—the commerce of Cuba, not only with the mother country, but with the United States and all foreign nations, must remain as it has during the past quarter of a century, crippled, restricted, and struggling. * * * The last tariff for imports and exports of the island of Cuba commenced to be enforced in 1847. Foreign merchandise in foreign bottoms pay, some $27\frac{1}{2}$ per cent., others $33\frac{1}{2}$ per cent.; foreign merchandise in Spanish bottoms from foreign ports, some $19\frac{1}{2}$ per cent., others $23\frac{1}{2}$ per cent. The same rates of $19\frac{1}{2}$ per cent. and $23\frac{1}{2}$ per cent. are levied upon foreign merchandise coming from the Peninsula in Spanish bottoms. Spanish goods coming in foreign vessels pay, some $14\frac{1}{2}$ per cent., others $17\frac{1}{2}$ per cent. All Spanish productions and manufactures (except jewelry) that come in Spanish vessels pay $7\frac{1}{2}$ per cent. An additional 3 per cent. has been laid on since this tariff went into operation."—(Comm. Rel., vol. 3, p. 126.)

A careful inspection of the tariff, in detail, has been made, and it was found that almost all the more important productions of this country are charged the highest rate— $36\frac{1}{2}$ per cent.—and discriminations are made against us by over valuations.

It is wonderful that our manufacturers should be able to send any of their fabrics to the island in the face of such impositions and discriminations. Whether they are or not, and to what extent, are not known, but it is believed that the amount is very limited. The im-

portation of manufactured articles into the island from all quarters, in 1854, amounted to about \$12,300,000. This amount certainly would be secured to them by a change which would enable them to introduce their goods free, whilst all others were charged our regular tariff rates. As, however, the population of the island is exclusively agricultural, and is increasing rapidly both in numbers and in wealth, a largely increased demand might be looked for, especially under a more liberal system of commercial exchanges; and Cuba would probably prove to be their most valuable customer, taking millions of their fabrics, and threatening no rivalry. Whilst this would be profitable to the manufacturers, it would be eminently beneficial, in a national point of view, as aiding to settle the heavy balance of trade against us in our intercourse with the island.

In 1858 we imported from it.....	\$27,214,846
Whilst we exported to it only.....	14,433,167
Leaving a balance of.....	12,781,679

Perhaps there is no more appropriate connexion in which to state that, in 1852, when our trade with Cuba was considerably less than half what it was in 1858, the Spanish government collected from it \$3,338,120 of revenue. At the same rate it levied, on our trade of 1858 \$7,600,000. What increase might we not expect in our trade when relieved of such an imposition? Its ability to exist under it at all is proof that, if free, it would be susceptible of almost indefinite extension.

3. Benefits to the navigation interest. The devices adopted to exclude foreign shipping from engaging profitably in the carrying trade of the island are vexatious and oppressive in the extreme.

The differential duties in favor of trade under the Spanish flag, and against the flags of other nations, are exhibited in all the extracts we have already made from their tariff. The same policy is adopted not only in regard to all imports, but also in their export regulations.

Superadded to these are a multitude of port charges and dues, in all which heavy discrimination is made in favor of Spanish vessels. For nearly thirty years this government has been endeavoring, by negotiation and by retaliatory legislation, to induce a relaxation in favor of our shipping, but its efforts have not been attended with the least measure of success. Our minister at Madrid wrote to Mr. Marcy, in 1853: "Since my reception at court, I have had several interviews with M. Calderon. I find him ill inclined to favor any policy that might tend to bring Spain to a closer connexion with the United States. He sets no great value on the advantages which his countrymen might derive from a free intercourse with us, and views rather as a danger whatever is likely to promote it." This is probably the general feeling of Spanish politicians, at least of the old school, and it is futile to aim at any advantages for our citizens, in the island of Cuba, so long as it remains subject to Spanish law.

The discriminations against our shipping can be better appreciated from their effects than from an enumeration of them in detail.

The total commerce of Cuba, import and export, for the year 1854, according to its custom-house returns, which are said to be 25 per cent. under the truth, was \$64,078,309, employing 3,812 vessels of about 1,000,000 tons. From the proximity of the seat of this trade, and the nature of the exchanges between Cuba and other countries, our ship owners ought to enjoy the carriage of nearly or quite the whole of it. In the absence of discriminations against them, their superior skill and enterprise would enable them to secure its monopoly.

The following table will show how far the repressive energy of Spanish legislation has driven their sails from their own doors to seek employment in distant quarters of the globe.

Let the mariner when he lies paralyzed and shivering in the frozen seas of northern Europe, or floats lazily on the yellow waters of Asia, where everything around him bespeaks man and nature dormant and stationary, turn his thoughts to the soft atmosphere and rich vegetation of the tropics. There he will see the Spanish sailor—the petrified semblance of the bold mariners of the same nation who discovered this continent—protected by a bulwark of legislation to keep off intruders, enjoying without merit the prize which ought to be the reward of skill and enterprise.

Number of vessels entering the ports of Cuba from 1848 to 1854.

	1848.	1849.	1850.	1851.	1852.	1853.	1854.
Total.....	3,548	3,213	3,356	3,869	3,612	3,918	3,812
United States	1,733	1,639	1,596	2,014	1,886	2,307	2,130
	1,815	1,574	1,760	1,855	1,726	1,611	1,682

The trade of the island and the tonnage employed are greater now than they were four years ago; but no official returns are at hand of a later date than those given. It appears that our shipping is superseded by foreign, principally Spanish, to the extent of about 500,000 tons per annum. In this statement no account is taken of the shipping employed in the coasting trade. We have no data on which to base even an estimate of this; but it must be very large in an island having many good harbors and more than fifteen hundred miles of seacoast.

4. The benefits to the commercial classes. This branch of the subject is susceptible of being presented in so many points of view that the length to which it is desirable to restrict this report will not allow of anything more than the presentation of facts drawn from official sources, from which each inquirer may form for himself an estimate of the productiveness and commercial capabilities of the island. The committee feels less reluctance to pursue this course, because the intelligence and sagacity that have always

characterized our commercial classes are a guaranty that they need no aid to enable them to draw reliable deductions from known facts and no prompting to induce them to extend by every honorable means the field in which they may display enlightened and liberal enterprise.

“Its great fertility of soil, its genial climate, its almost limitless resources, its commercial wealth, and its geographical position, render the Island of Cuba the most important as it is the largest of the Antilles.

“It comprises an area of 31,468 square miles, (30,139,520 acres—about the size of all the New England States except Maine.)

“The census of 1775 gave a population of 170,370 ; that of 1817, of 551,998 ; that of 1841, of 1,007,624 ; and that of 1850, of 1,247,230, of which last 605,560 persons were whites, 205,570 free colored, and 436,100 slaves. The portion of the island under cultivation does not exceed two millions of acres, (less than one-fifteenth part,) but most abundant crops of maize, yams, bananas, potatoes, sugar, coffee, tobacco, and, to a limited extent, of cotton, cocoa, and indigo, are produced.”—(Comm. Rel., vol. 1, p. 177.)

“The amount of raw sugar, as a gross product to the acre, in several countries of the globe, from good authority, is as follows :

Mauritius	6,000 pounds.
Brazil.....	5,000 do
Cuba.....	4,000 do
Isle of Bourbon.....	3,300 do
Guadaloupe	2,000 do
Vera Cruz	1,900 do
Martinique.....	1,700 do
Bengal.....	1,600 do
St. Domingo.....	1,100 do
Louisiana	1,000 do.”

(Homans' Cyclopedia of Commerce, 1700.)

Cuban sugar is preferred to all others in the markets of the world, and the only two countries that exceed it in production to the acre raise a comparatively small amount in the aggregate.

An intelligent historian, resident in the United States, says : “Cuba has been justly styled the garden of the world ; perpetual summer smiling upon its favored shores, and its natural wealth almost baffling the capacity of estimation. It is scarcely credible that, when the generous soil produces from two to three crops annually, the vegetable wealth of this island should be so poorly developed. It is capable of supporting a population of almost any density, and yet the largest estimate gives only a million and a half of inhabitants. Nowhere on the face of the globe would intelligent labor meet with a richer reward, nowhere on the face of the globe would repose from labor be so sweet. Cuba is, indeed, a land of enchantment, where nature is beautiful, and where mere existence is a luxury ; but it requires the infusion of a sterner, more self-relying, and enterprising race to fully test its capabilities, and to astonish the world with its productiveness.

“The virgin soil of Cuba is so rich that a touch of the hoe prepares it for the plant. So fertile a soil is not known to exist in any other

portion of the globe. It sometimes produces three crops to the year, and, in ordinary seasons, two may be relied upon."—(Ballou's History of Cuba.)

It is said that a mixture of the three kinds of soil by which the island is covered forms the richest fertilizer, next to guano, known in agriculture.

With its present limited population and inadequate cultivation, its productions are immense, having been in 1855, according to the report of the American consul, as follows :

Sugar	\$36,000,000
Coffee.....	1,000,000
Molasses	2,400,000
Minerals	2,500,000
Wax and honey	1,000,000
Rum.....	1,000,000
Tobacco and cigars.....	32,000,000
Fruits, &c.....	2,000,000
Total	<u>77,900,000</u>

As might be supposed, the commerce resulting from these rich productions is very large, though not nearly so great as it would be if relieved from onerous burdens and restrictions. The following table, compiled from official sources, exhibits the exports and imports for the year 1854:

	Exports.	Imports.
Spain	\$3,615,692	\$9,057,428
United States.....	11,641,813	7,867,680
England	11,119,526	6,610,909
All other nations.....	6,306,700	7,858,561
Total	<u>32,683,731</u>	<u>31,394,578</u>

Exportable domestic produce is the basis of all commerce. The amount of such produce possessed by any people measures their commercial capability; or, in other words, their purchases in a series of years will about equal their ability to pay. Any commerce beyond that must be unsound as involving the country in debt, or positively detrimental as making drafts on its accumulated capital to pay balances. Taking the exports as the measure of commercial capacity, Cuba has, in proportion to its population, nearly three-fold that of the United States. With an estimated population of 28,000,000, the United States exported in the year 1858 \$293,758,279 of domestic produce, being ten dollars and forty-nine cents per head; whilst Cuba, in 1854, exported twenty-seven dollars and twenty-three cents per head. The fact that a total population of 1,200,000, of all classes, paying a tax of twenty-three millions of dollars to Spain, and without any of the encouragement or protection derived from good government, can exhibit such results from their rude and untutored industry,

will speak volumes to the commercial inquirer, and needs no comment.

Determined to confine themselves to incontrovertible facts, the committee have been obliged to go back to 1854 in order to obtain official information. In the four years that have since elapsed great progress has been made in the island, and it is not doubted that 25 per cent. must be added to these results, to represent the wealth and commerce of the present time. In addition to which, all writers agree that the official reports from their custom-houses are 25 per cent. under the truth.

We cannot hope that we have been able to present all the material facts bearing upon this point. Indeed, the jealousy of the Spanish government sedulously conceals much that would throw light upon the subject. But the few prominent facts that we have mentioned will show, beyond doubt, that to the commercial classes of the United States the acquisition of the island is of inestimable importance.

Ours is a government dependent on the consent of the governed, and resting for its basis upon the affections of its citizens. If the arm of power is felt, it is in repressing vice and maintaining order. If there is, throughout the broad limits of the republic, one citizen who looks with malevolence upon the Constitution under which he lives, he is spurned by the good, but fears no persecution. *Haud invitis* is, and ought to be, our maxim in extending our institutions over organized communities. It would accord neither with our principles nor our practice to take into the Union any territory already fully occupied by a civilized people averse to our Constitution. It becomes important, then, to inquire whether the people of Cuba would probably desire annexation to the Union.

On this point we can have no direct assurances, for the slightest whisper of discontent would probably bring down upon their heads the wrath of the government under which they live.

A well-informed historian thus sums up the oppressions under which they groan:

"She is permitted no voice in the Cortes; the press is under the vilest censorship; farmers are compelled to pay ten per cent. on all their harvest except sugar, and on that article two and a half per cent.; the island has been under martial law since 1825; over twenty-three millions of dollars taxes (about \$400 to each family) are levied upon the inhabitants, to be squandered by Spain; flour is so taxed as to be inadmissible; the natives of the island are excluded entirely from the army, the judiciary, the treasury, and the customs; letters passing through the post are opened and purged of their contents before delivery; planters are forbidden to send their sons to the United States for educational purposes; in short, every possible subterfuge is resorted to by the government officials to swindle the people, everything being taxed, and there is no appeal from the captain general." (Many of the oppressions enumerated are omitted for brevity.)

To these grievances are to be added the terrible threat constantly held over them by the minions of the government, that, on the least

appearance of disaffection or rebellion, the shackles will be stricken from the slave population of the island, and half a million of African savages will be turned loose to deluge their hearths in blood and desolate the island. Threats of spoliation and visions of carnage hang like a thunderbolt over their heads.

If the thirty thousand resident Spaniards who are allowed to monopolize the honors and emoluments of government, and to domineer over the island in the very wantonness of unrestrained power, should object to any change, it would not be surprising. The same class of persons interposed the same kind of objection to the cession of Florida, where their exactions were not nearly so great, nor their privileges so lucrative, as they are in Cuba. As was done in the case of Florida, there could be reserved to them by the treaty the privilege to leave before the flag of the republic is raised on the island.

To the five hundred and twenty thousand native white population the question presented is totally different. To them it is a question of emancipation from thralldom, freedom from exactions and oppression, elevation from political servitude to political freedom, escape from the most irresponsible despotism to be invested with the full powers of self-governing freemen. From being a colony, governed by laws in the making of which they have no voice, and the local administration of which is in the hands of a class having no sympathy with them, they would become an equal in a confederacy of States, governing themselves in all local affairs, and through their senators and representatives in Congress participating in the conduct of the federal Union, whilst enjoying its protection and sharing in its glories. Under the liberal commercial system which prevails in our Union, and which has so wonderfully developed the industry and wealth of the nation, the citizens of Cuba might reasonably expect to attain to a degree of wealth, civilization, and power which has never been reached by any people living under a political despotism.

To suppose them insensible to these advantages is to attribute to them an obtuseness most variant from all the accounts we have of them; and to suppose that, being sensible of them, they would not eagerly embrace an opportunity to become a State of the Union, would be to deny the existence in them of the motives and aspirations which have been found to impel other branches of the human family.

Our object in pointing out the material advantages that would result to our own citizens from the acquisition of Cuba has not been to excite their cupidity, nor to encourage unlawful enterprises for its seizure. As such a prize could only be paid for out of the common treasury, so must its acquisition, whether by purchase or force, be by the constituted authorities acting in obedience to law. Our purpose is to show, that whilst political advantages and national security are the objects at which we aim, the pecuniary gains would be such that we can afford to pay to Spain a liberal price for its transfer. Though it has been an object of solicitude to our government and people for many years, it is believed that no distinct offer has ever

been made to the Spanish government for its purchase. In the opinion of the committee the time has arrived when such an offer should be made, in such terms as may seem to the President, who is charged by the Constitution with the duty of negotiating treaties, best calculated to arrest the serious attention of the Spanish government.

The committee are aware that some who admit the force of all that is said in favor of the acquisition, and who would not purposely throw obstacles in the way of its attainment, doubt the propriety of any action at this time, because, as they allege, the attempt to procure the assent of Spain will be futile.

The committee cannot recognize the force of this objection.

The President, in his annual message to Congress, said: "The publicity which has been given to our former negotiations upon this subject, and the large appropriation which may be required to effect the purpose, render it expedient, before making another attempt to renew the negotiation, that I should lay the whole subject before Congress. This is especially necessary, as it may become indispensable to success that I should be intrusted with the means of making an advance to the Spanish government immediately after the signing of the treaty, without awaiting the ratification of it by the Senate."

In his special message of January 21 he again calls the attention of Congress to the subject, and declares that he deems "it highly important, if not indispensable, to the success of any negotiation which I [he] might institute for the purpose, that the measure should receive the previous sanction of Congress."

He alone has means of obtaining official information as to the disposition of the Spanish government, and it is not to be presumed that this recommendation is made and reiterated to Congress without a sufficient motive. A failure on the part of the national legislature to respond to the Executive recommendation will be attributed by Spain, however improperly, to opposition or indifference to the object, and will tend much to render futile any attempt at negotiation. Since the subject has been so prominently presented by the President, omission to act would be regarded by her as little less expressive than positive dissent from his views.

The committee hope that circumstances may never occur rendering it incumbent on the United States, "under the imperative and overruling law of self-preservation," to take possession of the island without the consent of Spain; but if they should, summary measures could be much more easily justified if we are prepared to show that we have exhausted honorable negotiation in attempts to avert the necessity, and had offered to Spain an equivalent in exchange for it. As such an offer might be necessary to the complete vindication of this government hereafter, we ought not to be deterred from making it by any supposed unwillingness on the part of Spain to accept it, or even to entertain it in an amicable spirit.

Approving the recommendation of the President, and entertaining the belief that by a failure to act Congress would take upon itself a grave responsibility, the committee herewith report back the bill referred to it by the House: "A bill appropriating money to enable

the President to settle unadjusted differences with the government of Spain, and for other purposes," with an amendment to strike out "one," wherever it occurs, and insert "thirty," and recommend its passage.

The bill is, in effect, similar to the act entitled "An act making further provision for the expenses attending the intercourse between the United States and foreign nations," passed 26th of February, 1803, to enable Mr. Jefferson to negotiate a treaty for Louisiana; and to "An act making further appropriation to bring the existing war with Mexico to a speedy and honorable conclusion," passed March 3, 1847.

The sum named in the bill is proposed to be appropriated for no secret or disguised purpose, but to enable the President to make a payment to the Spanish government, on the full ratification of the treaty by it, without waiting for its ratification by the Senate of the United States, and the appropriation of the money by Congress; it being supposed that a contingency might arise in which the ability to make such prompt payment would tend to bring negotiations to a successful issue. Nor is it intended to limit the amount which the President may engage to pay for the adjustment of our differences with Spain, including the cession of Cuba. This and all other details of the treaty, if a treaty can be negotiated, are left to be arranged and its execution provided for in the manner prescribed by the Constitution and laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SECTION 1. That the sum of one million of dollars be, and the same is hereby, appropriated, out of any money not otherwise appropriated, to enable the President to conclude with the government of Spain a treaty of amity, and for the settlement of all differences, including the cession of the island of Cuba; to be used by him if he shall think fit in advance of the ratification of the treaty by the Senate: *Provided*, said treaty, when signed by the authorized agents of the two governments, and duly ratified by the government of Spain, shall call for the expenditure of the same or any part thereof; full and accurate accounts of which expenditure shall be by him transmitted to Congress at as early a day as practicable.

SEC. 2. *And be it further enacted*, That if, at the time said payments shall be required to be made, there shall not be in the treasury sufficient funds not otherwise appropriated, the President of the United States is hereby authorized to borrow so much as may be necessary, not to exceed the sum of one million of dollars, in the same manner and on the same terms and conditions as were prescribed by an act entitled "An act to authorize a loan not exceeding the sum of twenty millions of dollars," approved 14th June, 1858.

UNADJUSTED DIFFERENCES WITH SPAIN.

[To accompany Bill H. R. No. 678.]

JANUARY 24, 1859.

Mr. RITCHIE, from the Committee on Foreign Affairs, submitted the following

VIEWS OF A MINORITY:

Report of a minority of the Committee on Foreign Affairs on the proposed bill authorizing the President to purchase Cuba.

The President of the United States, in his annual message of 6th December, 1858, recommends the acquisition of Cuba by purchase, if possible, from Spain. He says: "The publicity which has been given to our former negotiations upon this subject, and the large appropriation which may be required to effect this purpose, render it expedient, before making another attempt to renew the negotiation, that I should lay the whole subject before Congress. This is especially necessary, as it may become indispensable to success that I should be intrusted with the means of making an advance to the Spanish government immediately after the signing of the treaty, without awaiting the ratification of it by the Senate."

In conformity with this recommendation, the majority of the Committee of Foreign Affairs have agreed to report a bill placing the sum of thirty millions of dollars at the disposal of the President for the purpose stated by him so soon as the treaty shall be ratified by Spain, and without waiting for the ratification by the Senate of the United States.

There are three reasons alleged by the President of the United States why we should "acquire Cuba."

The first is, that we may put a stop to the slave trade, and thus give hopes for the civilization of benighted Africa. He blends, however, somewhat this first reason with his second reason, derived from "the imperative and overruling law of self-preservation." His message on this part of the subject is as follows:

"The truth is, that Cuba, in its existing colonial condition, is a constant source of injury and annoyance to the American people. It is the only spot in the civilized world where the African slave trade is tolerated; and we are bound by treaty with Great Britain to maintain a naval force on the coast of Africa, at much expense, both of life and treasure, solely for the purpose of arresting slavers bound to

that island. The late serious difficulties between the United States and Great Britain could never have arisen if Cuba had not afforded a market for slaves. As long as this market shall remain open there can be no hope for the civilization of benighted Africa. Whilst the demand for slaves continues in Cuba, wars will be waged among the petty and barbarous chiefs in Africa for the purpose of seizing subjects to supply this trade. In such a condition of affairs it is impossible that the light of civilization and religion can ever penetrate these dark abodes.

"It has been made known to the world by my predecessors that the United States have, on several occasions, endeavored to acquire Cuba from Spain by honorable negotiation. If this were accomplished, the last relic of the African slave trade would instantly disappear. We would not, if we could, acquire Cuba in any other manner. This is due to our national character. All the territory which we have acquired since the origin of the government has been by fair purchase from France, Spain, and Mexico, or by the free and voluntary act of the independent State of Texas in blending her destinies with our own. This course we shall ever pursue, unless circumstances should occur, which we do not now anticipate, rendering a departure from it clearly justifiable, under the imperative and overruling law of self-preservation."

We believe we are quite as much opposed to the slave trade, and quite as desirous that "benighted Africa" should be civilized as is the President, and yet we do not think ourselves called upon, under existing circumstances, either for the one or the other purpose, to "acquire Cuba from Spain either by purchase" or by conquest. In fact, since the message of the President was sent to Congress circumstances have occurred which show that the African slave trade is carried on, if not tolerated, in another "spot in the civilized world" besides Cuba. It is a fact that slaves from Africa have lately been landed and disposed of in the United States, apparently with little attempt at concealment, and that hitherto the attempts that have been made to bring the importers and the purchasers of the said African slaves to justice have been wholly unavailing. It is proper, therefore, that we should, in any case, suppress the slave trade between Africa and the United States of America before we interfere with the trade to Cuba. That trade is contrary to law in Cuba as well as in the United States, and thus in theory as well as in practice the one seems to be at present, so far as this subject is concerned, on a somewhat similar footing with the other.

The President himself remarks that the late serious difficulties between the United States and Great Britain respecting the right of search are happily terminated. On his own showing, then, the possession of Cuba by the United States was not necessary for that purpose, and it is hoped that such difficulties will not occur again, or that if they should again occur they will again be brought to a like happy termination. The undersigned are of opinion that it is wholly unnecessary for the United States to acquire Cuba for the purpose of putting an end to the African slave trade either to that

island or to the United States, or for the purpose of preventing difficulties between the United States and Great Britain. The benevolent intentions of the President can be easily and perfectly effected by an agreement with Great Britain as to the visitation of vessels. This agreement can be made in such a way as to be perfectly honorable to both parties; and under such an agreement a few small vessels, commanded by active and diligent officers, fully aware of the sincere desire and earnest determination of our government to put down the African slave trade, would be all that would be necessary on the part of the United States to accomplish that purpose. In fact, the probability seems to be that this African slave trade is quite as much indebted for its existence to the negligent manner in which the laws and treaties of the United States are executed, or rather not executed, as to the demand for slaves in Cuba.

The second reason alleged by the President in favor of the acquisition of Cuba is its necessity to the safety of the United States. He says:

“The island of Cuba, from its geographical position, commands the mouth of the Mississippi and the immense and annually increasing trade, foreign and coastwise, from the valley of that noble river, now embracing half the sovereign States of the Union. With that island under the dominion of a distant foreign power, this trade, of vital importance to these States, is exposed to the danger of being destroyed in time of war, and it has hitherto been subjected to perpetual injury and annoyance in time of peace.”

It is believed that the President of the United States is in error in this matter, or, if not in error, that he has at least stopped far short of the point to which it will be necessary to go, in order that the United States may be safe and free from molestation. East of Cuba lie the Bahama islands, and south and east the islands of Jamaica and St. Domingo, which, if the United States had Cuba, would still command the immense and annually increasing trade, foreign and coastwise, not only of that noble river the Mississippi, but also of the noble island of Cuba itself. In fact, the acquisition of Jamaica is much more necessary, at present, for the security of our commerce, than that of Cuba. The great body of the commerce to and from the Gulf of Mexico passes along the southern coast of Cuba through the channel between Cuba and Jamaica. Cuba is owned by Spain, a government weak as a naval power, and whose ports might be easily shut up by our fleet in case of war. Whereas Jamaica belongs to Great Britain, the leading naval power of the world; and for that very reason the possession of Jamaica is much more important to the safety of our commerce than that of Cuba. Great Britain, too, is quite as distant from the Gulf of Mexico as Spain, and when difficulties occur in the West Indies between the United States and Great Britain, we are obliged to negotiate about them either in Washington or London. The British minister, moreover, has no right to make treaties or settle difficulties, except in pursuance of authority from home, and cases frequently arise where we are compelled to wait till he can write to London and receive an answer. But

this is not all. The possessions of Great Britain lie along our northern boundary, all the way across the continent, from the Pacific ocean to the Atlantic ocean, and endanger our safety the whole way. Her possessions also in New Brunswick, Nova Scotia, and New Foundland, from their geographical position, command the main body of our commerce with Europe. If, then, the theory of the President be correct, that it is necessary to acquire Cuba for safety, it is still more necessary for our safety that we should acquire Jamaica and the other British possessions in North America. But it is manifest that, under all the circumstances, the fears of the President of dangers to our commerce, arising from the possession of Cuba by Spain, are groundless. Great Britain and France are much nearer to each other than the United States and Cuba, and either is a much more formidable power to the other than Spain is to the United States; and yet it would surprise the "civilized world" to hear either of these powers allege it was necessary to its own security that it should purchase or conquer the territory belonging to the other.

The truth is that we do not require Cuba for the sake of security; and if it were in the possession of Great Britain or France we should probably hear little either of offers to purchase or of threats of conquest, for the sake of security or for any other reason. If we manage our affairs wisely we are entirely safe with the territory we have. If we manage them unwisely the ownership of Cuba would only add to the general confusion.

There remains to be considered another reason offered by the President for the acquisition of Cuba. He says, "whilst the possession of the island would be of vast importance to the United States, its value to Spain is comparatively unimportant." In other words, Cuba would, in the President's opinion, be worth more to us than it is to Spain, and therefore we ought to have it. If any such theory as this is to be adopted and acted upon in the United States as the standard with regard to the rights of property, practical results will probably flow from it more wonderful and more unexpected even than would be the acquisition of Cuba by purchase from Spain. But at present we shall stand upon the theory of the rights of property as generally understood throughout the "civilized world," and upon that theory it is a complete answer to the President and those who hold with him to say that Cuba belongs to Spain, and that she is not willing to sell it or to part with it on any terms. Spain is herself the disposer of her own property, and has the absolute right to say whether she will sell it or not, under any circumstances, or for any consideration. From the history, moreover, of the attempts to "acquire Cuba" it is hardly possible that any one should believe that Spain will sell it, or that an offer to purchase it on the part of the United States will be looked upon as anything else than an insult, or as a mere pretext for a subsequent attempt to take the island by force.

The President says "our relations with Spain, which ought to be of the most friendly character, must always be placed in jeopardy whilst the existing colonial government over the island shall remain

in its present condition." In our opinion the President may easily maintain friendly relations with Spain by refraining from offers to purchase or threats to conquer Cuba. The moment the Spanish government perceives that he has laid aside all thoughts of acquiring Cuba, and desires merely to foster an amicable commercial intercourse, it will doubtless be ready to aid him to the utmost of its power. Instead of fears, suspicion, and mutual complaints, we shall have the interchange of benefits and mutual confidence. Spain does not ask to purchase or to conquer territory from us for the sake of her security, although perhaps the fear of danger would be quite as reasonable on her part as it is on ours. The President has only to imitate the conduct of Spain in this respect, in order to render our relations with that government of the friendly character which he desires.

But on the supposition that Spain would sell Cuba, we do not approve of any attempt to purchase it at present. We have now so many discordant elements in the United States that, for some time to come, it will probably be difficult enough to carry on the government with the requisite degree of harmony. The acquisition of Cuba at present would add to the difficulty, and it would not be wise in us to go out of our way to seek unnecessary trouble. Even the hope of great and immediate pecuniary profit to the United States to arise from the purchase of Cuba is probably altogether fallacious. The area of Cuba is set down as 47,278 square miles, and its population is said to be over one million. Her population to the square mile, then, must be nearly as great as that of Virginia. The lands worth owning are, and have been for generations, in the hands of private owners. The United States would acquire by purchase nothing but the political control of the island, and would be charged with its protection and defence in return for the right to levy taxes and duties on imports. In all probability the income under the system of the United States would not by any means defray the cost. The taxes levied by Spain are said to be enormous, but no such taxes would be levied by us, and our expenditures would necessarily be very heavy. We should be obliged to support a very costly establishment, or surrender the island as a prey to disorders little short of those of St. Domingo or Mexico. In the present state of our finances, \$200,000,000 are too much to pay for the privilege of expending many hundred millions more. It is not proposed by any one that in this acquisition private rights of property shall be violated. If they are to be respected, then, upon the purchase of the island from Spain, no person from the United States would acquire a right to settle in any part of it except upon purchase or rent from the present owners. We should acquire, as above stated, nothing but the political control of Cuba by purchase. In that view of the case, it is important to consider the character of the present population of the island. It is said to contain over half a million whites, about two hundred thousand free colored people, and about three hundred and fifty thousand or four hundred thousand slaves. The following table shows the area and population:

Humboldt states the area of the island to be 43,380 geographical square miles.

Turnbull puts it, with its dependencies, at 32,807 square miles.— (See History of Cuba by M. M. Bolone, published in 1854.)

Colton puts it, with its dependencies, at 47,278 square miles.

Population, as stated by Colton, in 1854.

Whites.....	501,988
Free colored.....	176,647
Slaves	330,425
	1,009,060
Of the whites there were, Spaniards.....	90,000
Canary islanders.....	25,000
French	3,000
English	1,000
North American and other people.....	3,000

A very considerable portion of the slave population may be said to be entirely savage, and all the inhabitants of the island are utterly diverse from the people of the United States in language, manners, habits, and political and social education for many generations. They have been accustomed to rely on the presence of a large body of troops for the preservation of order, and the necessity and the cost of maintaining them would be the same under the United States as it is under Spain. People such as those in Cuba are in no way fitted for taking part in or living under a government such as ours. Without discussing the question as to whether they are better or worse than our people, it is sufficient for our present purpose to say they are entirely different; so different that, if brought as a State into the Union, Cuba would probably exercise a disastrous influence on our public affairs, and disappoint, perhaps, no one more than some of those who are now very desirous of its "acquisition," with reference mainly to the protection of the system of slavery in some of the United States.

With regard to the annoyances to which our commerce has been subjected in Cuba, it may be remarked that continual fears of invasion from the United States may have rendered the Cuban authorities suspicious and vindictive. They may in some degree, by rash and inconsiderate action, have exposed themselves to the censures which have been passed upon them; but we should bear in mind that these difficulties have probably been much exaggerated by parties who desire the acquisition of the island by the United States, and who, for that reason, are disposed to magnify everything that looks like an annoyance to the commerce of this country. Wherever there is very extensive intercourse there will always be some difficulties so long as there are diversities of interests and sentiments among men; but, if we were only free of the talk about acquisition, the difficulties with Spain or Cuba would not be greater in proportion to our intercourse than those with any other country.

In connexion with his complaints against the Spanish government, and his proposed measures with regard to the acquisition of Cuba, the President repeats "the recommendation" in his message of December, 1857, in favor of an appropriation "to be paid to the Spanish government for the purpose of distribution among the claimants in the Amistad case." He says: "President Polk first made a similar recommendation in December, 1847, and it was repeated by my immediate predecessor in December, 1853. I entertain no doubt that indemnity is fairly due to these claimants under our treaty with Spain of October 27, 1795; and whilst demanding justice we ought to do justice. An appropriation promptly made for this purpose could not fail to exert a favorable influence on our negotiations with Spain."

We are of opinion that the President is in error on this point, and that Spain has no claim whatever on the United States in the Amistad case. On this subject we shall cite an authority which the President will hardly feel at liberty to call in question.

In his inaugural address delivered March 4, 1857, speaking of the Dred Scott case, the President says: "Besides, it is a judicial question, which legitimately belongs to the Supreme Court of the United States before whom it is now pending, and will, it is understood, be speedily and finally settled. To their decision, in common with all good citizens, I shall cheerfully submit, whatever this may be."—(Globe, vol. 35, page 371.) Whatever doubts there may be as to the "judicial" character of all the questions in the Dred Scott case, there can be none as to those in the Amistad case, which all arose upon a claim for restoration of property under the treaty of 1795. This claim has already been passed upon by the Supreme Court of the United States and decided adversely to the claimants. As the President seems to have forgotten or overlooked this decision, we beg leave to bring it to the attention of the House. The treaty with Spain of October 27, 1795, referred to by the President, was commented on and construed by that Court which the President himself is so anxious to maintain in its constitutional power in "all cases arising under the Constitution and the laws of the United States, and treaties made under their authority."

The language of the treaty cited by the Court is, (article 9:) "That all ships and merchandise, of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either State and shall be delivered into the custody of the officers of that port, in order to be taken care of and restored entire to the true proprietor as soon as due and sufficient proof shall be made concerning the property thereof."

The Court says: "To bring the case within the article, it is essential to establish, first, that these negroes, under all the circumstances, fall within the description of merchandise in the sense of the treaty; secondly, that there has been a rescue of them on the high seas out of the hands of pirates and robbers, which, in the present case, can only be by showing that they themselves are pirates and robbers;

and thirdly, that Ruiz and Montez, the asserted proprietors, are the true proprietors, and have established their title by competent proof."

The Court says further, (15 Peters, page 593:) "It is plain, beyond controversy, if we examine the evidence, that these negroes never were the lawful slaves of Ruiz and Montez, or of any other Spanish subjects. They are natives of Africa, and were kidnapped there, and were unlawfully transported to Cuba, in violation of the laws and treaties of Spain and the most solemn edicts and declarations of that government. By those laws and treaties and edicts the African slave trade is utterly abolished; the dealing in that trade is deemed a heinous crime; and the negroes thereby introduced into the dominions of Spain are declared to be free. Ruiz and Montez are proved to have made the pretended purchase of these negroes with a full knowledge of all the circumstances; and so cogent and irresistible is the evidence in this respect that the district attorney has admitted, in open court, upon the record, that these negroes were native Africans and recently imported into Cuba, as alleged in their answers to the libels in the case. The supposed proprietary interest of Ruiz and Montez is completely displaced, if we are at liberty to look at the evidence or the admissions of the district attorney." The Court held also that they were entitled to look at the evidence, and that "ships' papers and documents accompanying property, under the laws of nations, are but *prima facie* evidence of property, and are of no force when shown to be fraudulent." Finally, the Court says, (page 596:) "Upon the merits of the case, then, there does not seem to us to be any ground for doubt that these negroes ought to be deemed free, and that the Spanish treaty interposes no obstacle to the just assertion of their rights."

Really it would seem that if anything could be settled to the satisfaction of the President this matter has been so settled. We have a solemn judgment of the Supreme Court of the United States, giving a judicial construction to this treaty with Spain, and deciding this very case of the *Amistad*. Such a decision, in the opinion (above cited) of the President himself, is entitled to the cheerful submission "of all good citizens."

We believe that the President has wholly failed to show any sufficient reason why we should attempt to "acquire Cuba" at this time; and that he has equally failed in pointing out any mode in which we could "acquire Cuba" if we desired to do so. Purchase is manifestly out of the question, and an attempt to take the island by force would probably embroil us with other nations, and in the end be unsuccessful.

But admitting, for the sake of argument, the acquisition of Cuba to be desirable and possible, we look upon the act proposed by the majority of the committee as of the most dangerous character. We are not willing to give the President thirty millions of dollars to be disposed of by him before the proposed treaty is submitted to the Senate of the United States. After what has already occurred, it is clear that, if Cuba is to be acquired at all, it will be in open day-light, in the face of the world. If the purchase can be made at all, it can be done just as well without these thirty millions as with them. The

cases of Louisiana and Mexico are not in point. No party to the proposed transaction is engaged in war, and the whole matter is in such a position that either haste or secrecy, with regard to it, is out of the question.

The bill proposes that the money shall be paid upon the ratification of the treaty by Spain, without waiting for the action of the Senate of the United States. The effect of such a course would be to compel the Senate, so far as the fear of losing \$30,000,000 could compel them, to ratify the treaty whether they approved of it or not.

In short, we look upon this part of the proposed measure as a precedent which, if followed hereafter, would lead to placing the whole power of the government in the hands of the Executive. In this particular case it would amount to that. The House of Representatives is to be dispensed with, by placing the money in the hands of the President in advance of the commencement of the business, and the Senate is to be dispensed with by giving the President power to use the money without waiting for the action of the Senate upon the treaty.

In conclusion, we beg leave to remark that, so far as territory, population, and magnitude of resources are concerned, the United States are now entirely safe. Expressions of fear, or appeals to "the imperative and overruling law of self-preservation," as the motive for further acquisitions of territory, are so groundless as scarcely to be worthy of any very serious consideration. The safety of the United States depends upon a wise education of their own people, and a wise development of their own resources. Let them follow, at home and abroad, the golden rule, which the President himself, in a former communication to the Senate, (of January 7, 1858, relative to the capture of General Walker,) has declared to be of divine commandment, and no power on earth can harm them. In that is their safety. Let them habitually violate this rule, and no power on earth can save them. In that is their danger. Like all other people, we are governed by the laws under which the universe was created, and, like the nations which have gone before us, we shall reap the rewards of obedience or suffer the penalties of disobedience.

In every view of the case we are opposed to the bill submitted by the majority of the committee, and recommend that it be rejected by the House.

DAVID RITCHIE.
HOMER E. ROYCE.
ANSON BURLINGAME.

POST OFFICE DEPARTMENT—PROPOSED ABOLISHMENT OF.

JANUARY 21, 1859.—Laid upon the table and ordered to be printed.

Mr. ENGLISH, from the Committee on the Post Office and Post Roads,
made the following

REPORT.

The Committee on the Post Office and Post Roads, to whom was referred the following resolution of this House—

“*Resolved*, That the Committee on the Post Office and Post Roads be instructed to inquire into the expediency of abolishing the Post Office Department; and if it deems it inexpedient, that then they report on the propriety of repealing all laws that restrain individuals or corporations from carrying mails or mail matter,”

have had the same under consideration, and are of the opinion that it would be inexpedient at this time to abolish the Post Office Department, or to repeal “all laws that restrain individuals or corporations from carrying mails or mail matter.” They therefore ask to be discharged from further consideration of said resolution.

THE
REPORT
OF THE
COMMISSIONERS OF THE
LAND OFFICE
FOR THE YEAR 1881

IN
RESPONSE TO A RESOLUTION
PASSED BY THE HOUSE OF COMMONS
ON THE 12TH MARCH 1881

BY
THE SECRETARY OF STATE FOR THE
INTERIOR

REPORT

THE COMMISSIONERS OF THE LAND OFFICE
HAVE THE HONOUR TO ACKNOWLEDGE
THE RECEIPT OF THE REPORT OF THE
COMMISSIONERS OF THE LAND OFFICE
FOR THE YEAR 1881, AND TO
STATE THAT THE SAME HAS BEEN
FORWARDED TO THE HOUSE OF COMMONS
IN ACCORDANCE WITH THE
RESOLUTION PASSED BY THAT
BODY ON THE 12TH MARCH 1881.

FRANKING PRIVILEGE TO THE MOUNT VERNON ASSOCIATION.

JANUARY 25, 1859—Laid upon the table and ordered to be printed.

Mr. ENGLISH, from the Committee on the Post Office and Post Roads, submitted the following

REPORT.

The Committee on the Post Office and Post Roads, to whom was referred the memorial of the Mount Vernon Ladies' Association of the Union, asking for the extension of the franking privilege to said association, have had the same under consideration and report:

That, fully recognizing the praiseworthy and patriotic object of said association, they are constrained to reject the prayer of the memorialists. They view the franking privilege as it now exists as a great public evil, and are of opinion that it should be curtailed instead of extended. They therefore ask to be discharged from its further consideration, and that said memorial be laid upon the table.

FRANKING PRIVILEGE TO THE MOUNT VERNON ASSOCIATION

January 24, 1837—Laid upon the table and ordered to be printed

Mr. KENNEDY, from the Committee on the Post Office and Post Roads, submitted the following

REPORT.

The Committee on the Post Office and Post Roads, to whom was referred the memorial of the Mount Vernon Ladies Association of the United States for the extension of the franking privilege to said association, have had the same under consideration and report:

That, fully recognizing the pre-eminence and patriotic object of said association, they are constrained to reject the prayer of the memorial. They view the franking privilege as it now exists as a great public evil, and are of opinion that it should be curtailed instead of extended. They therefore ask to be discharged from its further consideration, and that said memorial be laid upon the table.

MAIL STEAMSHIPS BETWEEN THE UNITED STATES AND
GREAT BRITAIN.

[To accompany Bill H. R. No. 824.]

JANUARY 25, 1859.

Mr. WOOD, from the Committee on the Post Office and Post Roads,
made the following

R E P O R T .

The Committee on the Post Office and Post Roads, after careful examination into the various plans and proposals for ocean mail service, and a full consideration of the subject, have determined upon the plan submitted by the National Steamship Company, as follows:

For the past year there has been no regularity in the transmission of our mails to and from Europe. While the Collins and the Bremen lines were under contract there was an approximation to regularity; but even then the occasional loss of a voyage, which but too frequently occurred, caused most of the letters from Europe to this country to be expressly directed by "British steamers." This took from the receipts of the Post Office Department that fair proportion of mailage which it should have received, and left the lines to be supported by direct appropriations.

The Cunard line running with great regularity, and well sustained by the British government in its commencement, has now reached not only a self-supporting point, but yields a revenue to the government of Great Britain.

It is believed that a system of regular departures by American steamers will produce a like result; and that a semi-weekly mail to Europe, starting from the different Atlantic ports in alternate trips, will largely develop business and intercourse, yielding in import duties a largely increased revenue to the treasury; and in postages a sufficient sum to sustain the respective lines.

At the commencement of the service the steamers will have to contend for their proportion of mails, and it will only be after some few years of regularity have established their reputation that they can begin to recover a fair remuneration.

As the United States government will derive the first and greatest advantages by the increased amount of import revenue, it is but fair that it should contribute to sustain the steamers in their commence-

ment. For this reason, the bill which the committee now report contains a provision that if the postages shall not amount to two dollars per mile, the department shall pay at that rate during the three first years; but whatever excess is thus paid over the postage receipts, is to be deducted from the last three years of the contract by the Postmaster General. The service will therefore be performed in the whole contract term for the postages only, and thus the ocean mail service will cease to be a tax upon the Post Office Department.

The service is to be in two divisions—one from the northern ports of Portland, Boston, New York, and Philadelphia. The company are ready with steamers to commence this service so soon as the contract is entered into.

The other division embraces the ports of Baltimore, Norfolk, Charleston, Savannah, and New Orleans. This service is to commence within twelve months in steamers to be constructed under the supervision of the government; and the bill provides that two-thirds of the cost of these steamers shall be advanced by the United States in five per cent. bonds, the interest on which is to be deducted monthly from the payments due the company for postal service, and the principal to be returned in like manner in ten per cent. annual instalments after the end of the second years' service. This amount will be amply secured by a lien upon the steamers and by policies of insurance. In making this advance the government is pursuing the course established in first creating steam lines. Towards the Howland and Aspinwall steamers to San Francisco, the Law steamers to Chagres, the Collins steamers to Liverpool, and the Bremen and Havre lines, the government advanced \$25,000 per month on each steamer until they were finished, deducting the advance annually from the whole term of the contract. As the steam lines of New York were therefore started into existence by the aid of an advance of money in their construction, it is but fair that the south should share in an equal patronage.

It will be observed that the steamers depart from those cities on the Atlantic, which have great lines of railroad extended into the western States. The steamers, therefore, are but the continuance of these great arteries of trade to the shores of Europe. The whole of the country therefore becomes interested in this truly national line of steamers; and the high character of the individuals, and their known wealth, in each of the States who compose the company, is a guarantee that the contract will be faithfully carried out.

The bill as proposed requires no appropriation. The sums to be advanced are in bonds; the postages will nearly pay the service; and the excess, if any, will come from the general funds of the Post Office Department.

The provisions of the bill are just and fair, guarding the interest of the government, promoting commerce, and adding to the facilities of the people. The committee therefore recommend its adoption by Congress.

CATHARINE ANSART—HEIRS OF.

JANUARY 26, 1859.—Laid upon the table and ordered to be printed.

Mr. VANCE, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of C. Ansart's heirs, with the decision of the Court of Claims thereon, asking for a pension for the services of their ancestor, Lewis Ansart, in the war of the revolution, ask leave to report:

That for the reasons set forth in the accompanying decision of the Court of Claims the ancestor of the petitioners, the said Lewis Ansart, was not legally entitled to receive half-pay under the act of 1836, as it appears he was not in the military service of the United States at all. And the committee are of opinion further, that the United States are under no other obligation to grant any remuneration to the heirs of the said Ansart, as it appears from the petition that the amount paid him, under a contract with the State of Massachusetts for civil service rendered by him, was ultimately preferred against and paid by the United States. The committee ask to be discharged from the further consideration thereof.

The COURT OF CLAIMS submitted the following report:

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

C. ANSART'S HEIRS *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Opinion of the Court, adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the
[L. s.] seal of said Court, at Washington, this first day of April,
A. D. 1858.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Court of Claims:

Your petitioners, humbly complaining, respectfully show: That in the year 1776 Lewis Ansart de Maresquelle, captain of infantry in the French service, came to this country for the purpose of offering his services in the revolutionary war then waging with Great Britain. At the time of his arrival the authorities of Massachusetts were engaged in establishing foundries for cannon; and, it being ascertained that said de Maresquelle had great skill and experience in the art, and was possessed of the knowledge of a method of casting iron cannon from the ore, of which his father was the inventor, proposals were made to him to enter the service of the State, as superintendent of the proposed foundries; and an agreement was made with him on the following terms: The State to furnish the land and everything necessary for buildings, apparatus and cannon; he to construct the furnace, superintend and direct the buildings and everything relating to the foundry; to furnish one cannon ready for service every twenty-four hours, out of the common ore of Massachusetts; to prove his cannon before commissioners appointed by the State; to disclose all his knowledge in the premises at any time to those designated by the State, and to none others; to forfeit his pay, and £1,000 in addition, if he did not fully comply with his agreement; to receive \$300 in hand, to defray expenses of removal hither, \$1,000 yearly during the continuance of the war, and \$666 $\frac{2}{3}$ yearly thereafter for the remainder of his life, if he did comply with it; and, finally, to have a colonel's commission, to give him rank, "but without any command or pay in virtue of said commission."

That on the 9th of December, 1776, the agreement above set forth was fully ratified and confirmed with him by the legislature of the State of Massachusetts Bay, and he immediately entered on the discharge of his duties, and continued in the discharge of them, and of such other duties as his superior officers imposed upon him, to the end of the war. That it appears by the proceedings of the council of Massachusetts, at various times, and by numerous public records, that he was uniformly styled "Colonel of Artillery and Inspector General of the Foundries" of said State. That on the 31st of August, 1778, it being represented to said council that Count D'Estaing requested the appointment of an officer to oversee the erection of certain works he thought necessary for the protection of his fleet, said Lewis Ansart de Maresquelle was, as engineer, directed to oversee and direct the erecting said works. That he remained in the service of Massachusetts, as colonel of artillery and inspector general of the foundries, to the close of the war, having been paid as such by that State from time to time; and that, subsequently, under the act of Congress of May 7, 1787, the payments so made to him by that State were preferred against and paid by the United States as part of the revolutionary military claim thereof.

That on the 9th day of September, 1781, the said Lewis Ansart de Maresquelle was lawfully married to Catharine Wimble, which was before the expiration of his said military service.

That after the end of the said war he procured, by act of the legis-

lature of Massachusetts, the change of his name to Lewis Ansart. That he remained in that State, as a citizen thereof, from the close of said war to the time of his death, which occurred on the 22d of May, 1804.

That after his death the said Catharine Ansart, (formerly Catharine Wimble,) whom he had left his widow, continued his widow until her death, which occurred on the 27th day of January, 1849. That during the said lawful wedlock of the said Lewis Ansart and the said Catharine there were born to them a number of children. That of these the following, and no more, survived the said Catharine, viz: Atis Ansart, Julia A. Varnum, Abel Ansart, Felix Ansart, and Sophia Spaulding, all of whom are now living.

That during her lifetime the said Catharine applied to the proper department for a pension for the services of her deceased husband, under the act of Congress of July 4, 1836, but failed to obtain it, and that neither did she, during her life, nor have her representatives nor children, nor either nor any of them, since received the whole or any part of the pension so due, as aforesaid; and that the sole right thereto remains in her said children, a majority of whom are your petitioners, who, for themselves, and in behalf the rest, pray for such relief as the law allows, and equity and good conscience demand.

And, as in duty bound, will ever pray.

F. F. C. TRIPLETT,

Attorney for Petitioner.

IN THE COURT OF CLAIMS.

ANSART'S HEIRS *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

The petition states the following as the facts in the case:

In the year 1776, Mr. Ansart, the ancestor of the claimants, made an agreement with "the authorities of the State of Massachusetts" respecting a foundry for casting cannon as follows:

"The State to furnish the land and everything necessary for buildings, apparatus and cannon; he (Ansart) to construct the furnace, superintend and direct the buildings and everything relating to the foundry; to furnish one cannon ready for service every twenty-four hours, out of the common ore of Massachusetts; * * * * * to receive \$300 in hand to defray expenses of removal hither; \$1,000 yearly during the continuance of the war; and \$666 $\frac{2}{3}$ yearly thereafter for the remainder of his life, if he did comply with it, (the contract,) and finally to have a colonel's commission to give him rank; 'but without any command or pay in virtue of said commission.'"

On the 9th of December, 1776, said agreement was ratified and confirmed by the legislature of Massachusetts; and Mr. Ansart immediately entered on the discharge of his duties, and continued to discharge them to the end of the war. It appears by the proceedings

of the council of Massachusetts, and by public records, that Mr. Ansart was uniformly styled "colonel of artillery and inspector-general of the foundries" of said State. On the 31st of August, 1778, said council directed him, as engineer, to oversee and direct the erecting of certain works for protecting the fleet of Count D'Estaing. Mr. Ansart remained in the service of Massachusetts as colonel of artillery and inspector-general of the foundries to the close of the war, having been paid as such by that State from time to time. And subsequently, under the act of Congress of May 7, 1787, the payments so made to him by said State were preferred against and paid by the United States as part of the revolutionary military claim thereof.

On the 9th of September, 1781, Mr. Ansart was married to Catharine Wimble, which was before the expiration of his military service, and he remained in Massachusetts, as a citizen thereof, from the close of the war to the time of his death, which occurred on the 22d of May, 1804.

The said Catharine, widow of Mr. Ansart, applied to the proper department for a pension on account of the services of her deceased husband, under the act of Congress of the 4th of July, 1836; but her application failed, on the ground that the service of her husband was not "in a military capacity."—(Ex. Doc. Sen., No. 37, 32d Cong., 1st sess.) She remained a widow until her death, on the 27th of January, 1849.

The petitioners are a majority of the children of said marriage, who, for themselves and the rest of the children, pray for relief.

This is an application for a pension under the third section of the act of Congress of the 4th of July, 1836, entitled "An act granting half-pay to widows or orphans," &c. That section is as follows:

"SEC. 3. *And be it further enacted*, That if any person who served in the war of the revolution, in the manner specified in the act passed the 7th day of June, 1832, * * * have died, leaving a widow, whose marriage took place before the expiration of the last period of his service, such widow shall be entitled to receive, during the time she may remain unmarried, the annuity or pension which might have been allowed to her husband, by virtue of the act aforesaid, if living at the time it was passed."—(5 Stat. at Large, p. 128.)

The act of the 7th of June, 1832, referred to in the above named section, provides "that each of the surviving officers, * * * who shall have served in the continental line or State troops, volunteers, or militia, at one or more terms, a period of two years during the war of the revolution * * * be authorized to receive * * * the amount of his full pay in the said line, according to his rank," &c.—(4 Stat. at Large, p. 529.)

This case requires us to determine whether Mr. Ansart was such an officer as is described in the said act of 1832. In other words, did he serve as an officer in the continental line, or State troops, volunteers, or militia, during the war of the revolution, &c., receiving full pay in said line?

It is very clear that he did not serve as such officer. According to the petition, he made an agreement, in 1776, with the State of Massachusetts respecting a foundry for casting cannon. He was to con-

struct the furnace, superintend and direct the buildings, &c., for which service he was to receive a certain compensation from the State and was to have a colonel's commission to give him rank, *but without any command or pay in virtue of said commission*. He had, therefore, the mere title of a colonel, without being authorized to serve in the continental line or State troops, volunteers, or militia, or to receive any pay as such officer. He was in no respect a military officer within said act of 1832, and would have had no claim to a pension had he been living when the said act of 1832 was passed.

Our opinion is that on the face of the petition there is no cause of action.

DANIEL PEDDINGHAM, ADMINISTRATOR OF

January 26, 1892.

Mr. YALE, Hon. the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to which was referred the petition of Edward J. Lee, administrator of the estate of Daniel Peddingham, deceased, and of others, heirs of said Daniel Peddingham, report

That they have examined the evidence in the case and are of the opinion that said Daniel Peddingham served in the Continental Army and was a member of the North Virginia regiment, and that he was entitled to a pension under the laws of the United States. The Committee recommends that the pension be granted to the heirs of said Daniel Peddingham, and that the same be paid to them in full.

DANIEL BEDINGER—ADMINISTRATOR OF.

[To accompany Bill H. R. No. 832.]

JANUARY 26, 1859.

Mr. VANCE, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of Edmund J. Lee, administrator de bonis non of Daniel Bedinger, deceased, and of others, heirs of said Daniel Bedinger, report:

That they have examined the evidence in the case, and are satisfied that said Daniel Bedinger served to the end of the war; that he was then a lieutenant in the fourth Virginia regiment on the continental establishment; that he was entitled to half-pay under the resolution of Congress of 21st October, 1780, until his death; that he died on the 17th day of March, 1818; and that the proper offices afford no evidence that he ever received such half-pay, or any commutation pay, or any portion thereof, though he received bounty land as an ensign. The committee accordingly report the accompanying bill.

DEXTER BARNES.

[To accompany Bill H. R. No. 833]

JANUARY 26, 1859.

Mr. FENTON, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the memorial of Dexter Barnes, report:

That they have had the same under consideration, and find from the evidence that the said Dexter Barnes was a private in the company of Captain John Silsbie and Lieutenant Charles Benner, in the war of 1812 between the United States and Great Britain; that on or about the 15th day of December, 1813, they encamped at Westfield, New York, on the south shore of Lake Erie; that they marched from Westfield to Buffalo; that he was in the battle at Buffalo, December 31, 1813, at the time our forces were attacked by the British and their Indian allies and the city burnt, and did not leave the ground until the American forces had mainly retreated, and thereupon, retiring three miles to Miller's, he, with about one hundred and fifty others, made a stand under the command of an officer, whose name is unknown to said Barnes; that he, with three of his comrades, one of whom was wounded and is now on the invalid list of pensioners, remained there on duty and in defence of the inhabitants of that retreat until disbanded and allowed to return home, with health impaired by fatigue and exposure, and he now asks Congress to pass an act allowing him 160 acres of land, which he is denied at the Pension Department on account of an error in making returns. The committee believe the testimony fully sustains his allegations. They think and feel assured that he gallantly and faithfully performed the service, and was honorably discharged when his services were no longer required. They therefore report a bill allowing him one hundred and sixty acres of land.

DEXTER BARNES
[The accompanying bill is No. 110.]

JANUARY 22, 1855.

Mr. Barnes, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the memorial of Dexter Barnes, report:

That they have had the same under consideration, and find from the evidence that the said Dexter Barnes was a private in the company of Captain John H. Miller and Lieutenant George Barnes, in the war of 1812 between the United States and Great Britain; that on or about the 15th day of December, 1812, they encamped at Wheeling, West Virginia, on the north shore of Lake Erie; that they marched from Wheeling to Buffalo; that he was in the battle at Buffalo, December 19, 1812, at the time our forces were attacked by the British and their Indian allies and the city burnt, and did not leave the ground until the American forces had mainly retreated, and thereupon, retreating to Miller's, he, with about one hundred and fifty others, made a stand under the command of an officer, whose name is unknown to said Barnes; that he, with three of his comrades, one of whom was wounded and is now on the invalid list of pensioners, remained there on duty and in defence of the inhabitants of that place until dispatched and allowed to return home, with health impaired by fatigue and exposure, and he now asks Congress to pass an act allowing him 160 acres of land, which he is denied at the Pension Department on account of an error in making returns. The committee believe the testimony fully sustains his allegations. They think and feel assured that he gallantly and faithfully performed the service, and was honorably discharged when his services were no longer required. They therefore report a bill allowing him one hundred and sixty acres of land.

BETTER SECURITY OF LIFE ON BOARD OF VESSELS
PROPELLED BY STEAM.

[To accompany bill H. R. No. 45.]

JANUARY 28, 1859.

Mr. ELLIHU B. WASHBURNE, from the Committee on Commerce, made
the following

REPORT.

*The Committee on Commerce, to whom was referred House bill No. 45,
further to amend the act entitled "A bill further to provide for the
safety of passengers on steam vessels," report:*

That they have had the same under consideration, and recommend
the passage of the bill accompanying this report. The bill embraces
some thirty sections, each of which is explained by the following:

Notes upon bill amending steamboat law.

SECTION 1. These boats are largely engaged in carrying passengers,
and are more liable to some kinds of accidents than passenger boats;
the inspection required by the law of 1838 is a mere farce, and ineffec-
tual for the objects contemplated. It is necessary to bring these boats
under the law of 1852, not only for the safety of persons on board
these boats, but on passenger boats also; the recent accident on the
Delaware is good evidence of this necessity. We also refer to the
following extract from a report of the supervising board:

"There have been constant and increasing complaints made to the
inspectors of the careless and reckless manner in which steamboats not
coming under the law are navigated.

"These vessels are controlled by officers not amenable in any
manner to punishment for any of the usual accidents occurring to
steamboats by collision, while the conduct of those of passenger steam-
ers is subject to immediate investigation, and if found guilty of incom-
petency, carelessness, or recklessness, to prompt punishment.

"The officers of steamers not coming under the law are fully aware
of this state of things, and the result is, that they throw the whole of
the trouble and responsibility of avoiding collisions upon the officers
of inspected steamers.

"Many aggravated cases of this character have occurred; but as the
law now exists, the inspectors are powerless to apply any remedy.

“These collisions sometimes occur from a neglect to exhibit proper lights on the part of uninspected steamers, and sometimes from a determination to pursue their own course and object, regardless of consequences.

“We do not, by this, intend to have it inferred that in all cases of collision between passenger steamers and other classes of steamers the case is such as here represented; but that in many it is so cannot be disputed. We would mention, as an instance of this state of things, that a complaint was made to one of the local boards by the captain of a passenger steamer that his vessel had been run into in a most reckless manner by a steam ferry-boat, stating that this was the fourth time that his boat had been run into in a similar way, and urging in the strongest terms that the inspectors would apply some remedy.”

The fees fixed in this section are made but one-half that of passenger steamers, that it may not bear too heavily on this description of vessels; and if so fixed, so far from becoming burdensome, will, on the average, be less per annum than the fees required from them for the inspection under the law of 1838, to which they are now subjected; further, these fees will go into the treasury of the United States, whereas under the law of 1838 they are retained by the inspectors.

SEC. 2. This requires a compliance by these boats with the provisions of this act, under the same penalties as are prescribed by the law of 1852 for passenger steamers.

SEC. 3. The provisions of the law of 1852 in regard to the carrying oil of turpentine and oil of vitriol are considered unnecessarily severe, and in fact nearly amount to a prohibition of the transportation on passenger steamers of these articles. The provisions in the law of 1852 are ambiguous in regard to spirits of turpentine, which is the article known as such in commerce, whereas the oil of turpentine is an article scarcely known in commerce; and some persons take advantage of this ambiguity to claim the privilege of carrying spirits of turpentine on passenger steamers without restriction. The provisions of this section are intended to do away with this severe restriction and this ambiguity, and at the same time to provide for the safe stowage and carriage of these articles, as well as others mentioned in this section, and which the commerce of the country absolutely demands.

SEC. 4. This section is to provide for a heavier penalty than that required by the law of 1852, as it is found by experience that the penalty therein prescribed is not sufficient to deter from the violation of the law, when a large and valuable, though dangerous, freight is offered to a passenger steamer.

SEC. 5. This section is intended to subject a person *attempting* to ship secretly gunpowder, or other dangerous articles, to the same penalty as they would be subjected to were the act consummated and these articles actually shipped; as a case has occurred within our experience, when a verdict was given by the court in favor of the party prosecuted by the district attorney, on the ground that the gunpowder was not actually put on board the steamer, although delivered alongside, and bills of lading taken for the same.

SEC. 6. This section is intended to guard against another mode of evading the provisions of the law of 1852 in regard to carrying gun-

powder, though, if possible, more dangerous than if carried on board the steamer, and subjects the parties to the same penalty as for carrying on board such passenger steamer contrary to the provisions of the law of 1852.

SEC. 7. The fusible plugs or rivets of pure tin proposed in this section to be inserted in high pressure boilers, in addition to the fusible alloy already required by law, is for the purpose of providing more effectually against that class of explosions which occur most frequently—those arising from low water in the boiler.

SEC. 8. This section provides that, together with other marks heretofore required, the thickness of the plates shall also be stamped thereon; the object being to enable inspectors to determine the thickness after the plates are worked into boilers, which would be difficult and in many cases impossible unless thus stamped by the manufacturer.

SEC. 9. This section is intended to consolidate in a body all previous provisions of the law in regard to carrying lights on certain classes of vessels, and also to compel the exhibition of lights during the night season upon boats and river craft not included in any previous provisions of law. These precautions in regard to the exhibition and carrying of lights are necessary, not only for the protection of the vessels upon which they are exhibited, but also to guard against collision, and thus protect lives on passenger steamers, and also prevent much troublesome litigation.

SEC. 10. This section provides that in certain classes of ocean steamers, which shall be hereafter built, water-tight cross bulkheads shall be introduced in such a manner that when any one of the compartments formed thereby becomes injured, by collision or other cause, water shall only enter the injured compartment. Many instances have occurred in which such bulkheads have been the means of saving the vessel and all on board, amongst which may be mentioned the following, viz: Steamers "Vesta," "Persia," "Montreal," and "North American;" and the "Arctic" was undoubtedly lost for want of this provision.

SEC. 11 provides proper means for pumping out the compartments provided in the previous section, in case of injury to either.

SECS. 12, 13, and 14, are for the purpose of regulating the carriage of life-boats and the equipment of the same; also requiring certain articles to be carried on the vessel deemed essential to the safety of the vessel at sea and of the passengers and crew in case of disaster; also regulating the number of passengers to be carried according to the tonnage of the vessel in certain cases of ocean passenger steamers.

SEC. 15. This section requires such an examination of sea-going steamers as shall satisfy the inspectors of their sound condition, which cannot be done by the ordinary mode of inspection, as a rotten or unsound condition of the vessel's frame cannot, if closely ceiled, be otherwise discovered.

SEC. 16 requires no explanation.

SEC. 17. The provision in this section for the appointment of a supervising inspector for the Pacific coast is made in consequence of the impossibility of the steamboat interest on that coast being properly

attended to by any of the present supervising inspectors, without neglecting other important sections of the country, and also in consequence of numerous complaints from the Pacific coast, and applications for such an appointment. Its necessity appears almost self-evident.

SEC. 18. This section provides for a local board at Paducah, Kentucky, Memphis, Tennessee, Galena, Illinois, at Apalachicola, Florida, and also a local board in the Territory of Oregon. This is done in compliance with several petitions to that effect; and the committee having examined into the subject, feel satisfied that the establishment of these local boards would be advantageous.

SEC. 19. This section provides for two assistant inspectors for the district of New York, who are considered necessary, as the large increase of labor, consequent upon bringing ferry-boats, tug-boats, freight-boats, &c., under the law, will render it impossible for two inspectors to perform or make the inspection prompt and efficient.

SEC. 20. This section is to provide for contingencies that may occur by the death or incapacity of one member of any local board, which, under the law of 1852, would render it impossible for a collector to issue legal enrolments or licenses to steamers.

SEC. 21. This section provides for the necessary increase in the salary of local inspectors, in consideration of the largely increased labor that will be thrown upon them, by bringing ferry-boats, tug-boats, freight-boats, &c., under the law; and, in some cases, an increase is made where it has been found by experience that the salary previously fixed was insufficient to secure the services of suitable persons as inspectors; it also provides for the new local boards established by this act, and for the pay of the assistant inspectors at New York. It should be observed that steamers to be inspected under the provisions of this bill now pay the *same fees*, or more, under the act of 1838; but in that case they are paid to the inspectors under said act as their compensation, and under the present bill will become United States revenue, said bill proposing to repeal that part of the act of 1838 which authorizes the appointment of inspectors by district judges, and requiring the duties of said inspectors to be performed by the inspectors under the act of 1852.

SEC. 22. This section provides, specifically, the mode of administering the oaths officially required in carrying out the provisions of the law, and is simply to render clear what is ambiguous in said law in this respect.

SEC. 23. This section provides for changing the manner in making certain reports in the law of 1852. The collectors of customs, to whom such reports are now made, in compliance with said law, have no direct interest in such reports, nor have they, in any manner, relation to their duties as collectors; but, on the contrary, have direct reference and relation to the duties of the inspectors. We therefore think there is manifest propriety in such reports being made to the inspectors, as it will thereby facilitate a prompt and efficient performance of their duties.

SEC. 24. The object of this section is, that in case of an accident to a passenger steamer, whereby life is lost, the earliest reliable infor-

mation may be furnished to those interested of the fate of relations or friends who may have been on board the steamer at the time of such accident; and also that inspectors may receive early notice of such accidents, and that investigation as to the true cause of the same may be facilitated thereby. At present, the only means by which inspectors are informed of the occurrence of such accidents is through the newspapers of the day, or public rumor.

SEC. 25. The law of 1852, in section 35, requires that a list shall be kept of all passengers on board passenger steamers, the object being, first, to obtain statistical information of the number of passengers carried throughout the country; and, second, that, in case of the occurrence of a disaster, should the books of the boat be saved, with the names of the passengers registered therein, the friends of persons travelling in that section of country may have information whether persons in whom they may have an interest were on board or not, and, if so, whether lost or saved. This requirement, in regard to keeping a list of passengers, has been found utterly impossible to carry out in steamers running on short routes. We have, therefore, excepted steamers running on routes of one hundred miles or less from keeping a list of names, but do require that they shall keep the *number* of passengers carried.

SEC. 26. This section is extracted from the act of July 7, 1838, being section 12 of said act, with the simple change, that by the provisions of section 12 the officers of steamboats are only liable for loss of life on board the vessels on which they are employed; whereas, as here drawn, they will be indictable whether such loss of life shall occur on their own or other vessel.

SEC. 27. This section merely establishes by law a present practice of the board of supervising inspectors in reference to their proceedings and annual reports.

SEC. 28. This section provides that the inspectors acting under the law of 1838 shall no longer continue to act, as all the duties imposed upon them by that act are, after the passage of this bill, to be performed by the inspectors appointed under the act of 1852.

It is confidently anticipated that, aside from other benefits which will result from this change, the expense of carrying out the various steamboat laws will be very materially reduced, and the whole be more beneficially and economically carried into execution.

In addition to the local inspectors in certain collection districts provided for in the ninth section of the act of 1852, it is proposed to establish four more local boards at points where the commerce has increased, since the passage of the law, to an extent so as to render an increase of local inspectors absolutely necessary, if it be intended to have the law executed. At the points where it is proposed to establish the additional local boards it is impossible for the present force to execute the law. Your committee are adverse to the establishment of new boards and the creation of new officers in any case where they can be dispensed with without manifest prejudice to the public interest; but it is submitted that the reasons for the creation of the new boards proposed are such as to make further legislation in that regard necessary.

The points where it is proposed to establish the new boards are Galena, Illinois; Oregon City, Oregon Territory; Paducah, Kentucky, and Apalachicola, Florida. In regard to Galena and Oregon, the committee submit the following letter from the late Secretary of the Treasury on the subject:

TREASURY DEPARTMENT, *April 21, 1856.*

SIR: I have examined the bill to amend the act passed the 30th of August, 1852, for the better security of the lives of passengers, &c., with the remarks of the board of supervising inspectors, and think the new provisions well calculated to effect the objects intended by the original act; and doubt not, if it receive the sanction of Congress, that the law can be better and more satisfactorily enforced.

I have feared the new boards of local inspectors, provided in the 14th section, might open the door to the creation of boards at many places where they were not needed, and render the execution of the law inefficient by the too great multiplication of the officers. After a consultation with the board, and hearing their reasons for the establishment of the boards at Galena and Oregon, I see the propriety of boards at those places, and that the same necessity does not exist at other places; and that, with a prompt and vigilant service on the part of the boards authorized, the law can be carried into effect without inconvenience to the interest involved.

The department, in order to see that the law was executed, has sent an agent to visit and report upon the operation of the law and its execution in the several districts, and to attend the meetings of the board, under the general supervising authority vested in the Secretary. It would be more effectual to give the department direct authority to do this, and let the department have a representative in the deliberations of the board.

To effect this, I submit the enclosed amendment, to be added to the 26th section of the proposed act.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

Hon. E. B. WASHBURNE,
Chairman of the Committee on Commerce, House of Reps.

The committee further submit the following official information in regard to the commerce and steamboat interest of Galena, which shows that port to be the third in importance on the Mississippi river, from New Orleans to the falls of St. Anthony. For all this amount of commerce, and the great number of steamboats to be inspected at Galena, and other points on the upper Mississippi river, there is no local board of inspectors, and it has been utterly impossible for the supervising inspectors for that district (who resided at Munroe, Michigan, nearly five hundred miles distant) to carry out the law.

A.

GALENA, *January 9, 1858.*

MY DEAR SIR: Your favor of the 12th ultimo, requesting transcripts in detail of the business of my office, has been received. I have been delayed in getting up the statements which you desire, on account of my official reports and accounts, which were necessary to be rendered to the department for the month of December. I now have the pleasure of transmitting you abstracts and statements of all the leading business transacted in my office for the year ending the 31st of December, 1857, together with a statement from wharf masters, books of arrivals, &c.; the latter I cannot give as strictly official, but have no doubt of its correctness. I would remark, in relation to the statement of the steamboats inspected for the past year, that it is difficult to arrive at the exact number inspected on the upper Mississippi, for the reason that the inspector only returns to my office the boats that properly belong to this port; and I have no doubt but the number would reach about thirty, which is an increase of seven over the previous year, and also exclusive of the four new steamers lately built by the "Galena and Minnesota Packet Company," which were inspected before coming into this place, and which will be added to the number of inspections for next season. These facts, in connexion with the number of pilots and engineers annually licensed, I think, cannot fail to be regarded as an important consideration for an amendment of the steamboat act providing for a local board for the upper Mississippi. My opinion is, that the business at present (aside from any increase in our commerce) is sufficient to occupy the time and attention of an inspector, or local board, without being called away from the Mississippi; and I have no doubt our supervising inspector would fully agree with me in this opinion.

Very respectfully, your obedient servant,

DANIEL WANN, *Surveyor, &c.*

Hon. E. B. WASHBURNE, M. C.,

Washington City.

B.—Abstract of inspection of steam vessels at the port of Galena for the year ending December 31, 1857.

∞

BETTER SECURITY OF LIFE

Date of inspection.	Denomination and name of vessel.	Name of master.	No. of vessels inspected.	Tonnage.	Date of inspection fees received.	Total amount.
1857.	<i>Steamers.</i>			<i>Tons and 95ths.</i>	1857.	
April 10	John McKee	Leroy Dodge	1	140 00	April 10	\$25 00
April 15	Ocean Wave	J. M. Andrews	2	235 16	April 15	25 00
May 19	Granite State	Wm. H. Gabbert	3	274 76	May 19	25 00
May 25	Clarion	J. C. Hoffman	4	72 67	June 11	20 00
May 28	North Star	J. B. Young	5	82 28	June 11	20 00
May 28	H. M. Rice	N. B. Kerr	6	119 01	June 13	20 00
May 21	Northern Belle	J. Y. Hurd	7	329 65	June 19	25 00
May 25	Fire Canoe	R. M. Spencer	8	166 15	June 24	25 00
July 8	Orb	(Not returned)	9	225 00	August 19	25 00
July 23	Galena	Wm. H. Laughlin	10	297 29	August 23	25 00
July 29	Kate Cassel	J. W. Washington	11	167 48	August 25	25 00
July 20	Equator	D. C. Marion	12	61 85	September 12	20 00
July 11	Hamburg	A. J. Bentley	13	206 00	October 6	25 00
July 22	War Eagle	A. T. Kingman	14	296 74	October 6	25 00
July 22	Golden Era	John Scott	15	209 41	October 6	25 00
September 25	City Belle	Wm. H. Laughlin	16	187 00	October 6	25 00
September 25	Alhambra	Wm. H. Gabbert	17	215 75	October 6	25 00
September 28	Flora	N. F. Webb	18	159 75	October 6	25 00
November 12	Fred. Lorens	J. W. Parker	19	236 39	November 13	25 00
November 26	H. S. Allen	E. C. Strong	20	41 31	Certificates not	
August 25	Ben. Campbell	Leroy Dodge	21	267 00	taken out and	
August 26	John McKee	James R. Keech	22	140 00	official fees un-	
September 25	Comet	D. B. Branch	23	86 48	paid.	
	Total		23	4,217 53		455 00

DANIEL WANN, Surveyor of Customs.

CUSTOM-HOUSE, Galena, December 31, 1857.

The foregoing abstract will agree with my accounts rendered monthly to the First Auditor, except the four last mentioned vessels, which have not been returned, for the reason that the inspection fees have not been paid.

The boats inspected at Dubuque and St. Paul are not embraced in this statement, although they belong to the eighth inspection district. They, no doubt, are returned by the proper officers of the customs to which they belong, and would likely make the number of inspected steamers on the upper Mississippi reach to about 30.

Number of vessels inspected from the year 1853 to 1857, inclusive.

For 1853.....	3 steamers.....	Dubuque and St. Paul included.....
1854.....	6 do.....	do do.....
1855.....	18 do.....	do do.....
1856.....	16 do.....	Exclusive of Dubuque and St. Paul.....
1857.....	23 do.....	do do.....

C.

Statement of the number and names of licensed pilots and engineers at the port of Galena for the year 1857.

PILOTS.

George W. Scott
John R. Campbell
Hiram R. Biddle
P. R. Cormack
Jerome Smith
W. L. Faucett
Leroy Dodge
O. L. West
Wm. H. Grapevine
Saml. Humberstone
Wm. E. Hartshorn
M. W. Smith
W. H. Morse
Hudson Nichols
O. T. West
C. R. Woodworth
Wm. J. Dolson
J. V. Webber
Alex. Grant
J. G. Churchill
O. H. Maxwell
Joseph Gaudupée
Louis Roberts
Nelson Roberts
Charles Temens

Richard McLagan
Wm. Spencer
John Haycock
John F. Luckey
Jeremiah Webber
Edwin Bell
A. M. Hutchinson
C. L. Richardson
John C. Hoffman
O. M. Kirby
A. R. Young
James Holmes
Joseph McDonald
J. B. Young
John P. Arnold
A. E. B. Hall
P. Moran
C. P. V. Lull
C. E. Sencerbox
Elicot Haycock
D. D. Williams
Judson T. West
Wm. A. Dunton
Wm. F. Fisher
George Nichols

Samuel H. Harlow
J. R. Hewitt
James M. Carrow
Oscar F. Knapp
Wm. A. Griffy
Abner St. Cyr

John W. Milton
Joseph Stone
Wm. Rambo
A. Lamont
John Hestleby—61.

ENGINEERS.

Oliver C. Stephens
Henry Whitmore
Wm. Briggs
M. L. Mikesell
Henry Webster
Robert A. Fitzsimons
Henry Miller
Thomas Dodge
George Hale
Hiram Bursie
Simeon Mikesell
Augustus Allendorf
H. J. McKee
Ed. R. Able
Charles Meeds
Isaac Swain
Cyrus N. Wells
George S. Sargent
James Kenister
Robert Collins
Henry Smith
James Livesey
Ed. O. Peck
Wm. McCraney
Matthew A. Hurd
John Curley
Isaac Fairfax

Hiram Hunt
James Hunt
Oliver Troxill
John V. Webber
R. P. McCuen
Jeremiah Webber
Ambrose Doyle
Robert Duffy
Samuel Prentiss
John Connelly
A. R. Young
John McCausland
George Frazier
Joseph Ross
John Ross
Wm. Swaine
Joseph E. Buchanan
Wm. J. Hamilton
Wm. A. Davis
Robert T. Hodges
Joseph Andrews
James H. Ray
Samuel Hunter
Thomas W. Jack
Philip Keen
Almon McKee
Wm. A. Rosevelt—54.

Licensed pilots.....	61
Licensed engineers	54

115 for 1857.

I would remark, in relation to this statement, that the list of pilots and engineers licensed at this port are only those returned by Mr. Lewis, the supervising inspector, and no return of those licensed by the local board of Chicago, who, I have no doubt, licensed quite a number during the year.

DANIEL WANN, *Surveyor*.

CUSTOM-HOUSE, *Galena*, December 31, 1857.

D.

Statement of enrolled tonnage of the port of Galena.

Denomination and name of vessel.	Name of master.	Tonnage.
		<i>Tons and 95ths.</i>
Steamer Northern Belle.....		329 65
Tishomingo.....		188 09
Luella.....		122 25
Hamburg.....		206 62
Falls City.....		183 03
War Eagle.....		296 74
Galena.....		297 29
Golden Era.....		209 41
Alhambra.....		187 00
City Belle.....		215 75
Adelia.....		127 27
Lucie May.....		171 59
Fred. Lorenz.....		236 39
Northern Light.....		414 00
Ocean Wave.....		235 16
Granite State.....		274 76
Milwaukie.....		402 60
Grey Eagle.....		382 75
North Star.....		82 28
Total enrolled tonnage of Galena.....		4,563 03

DANIEL WANN,
Surveyor of Customs.

DECEMBER 31, 1857.

E.

GALENA, *December 26, 1857.*

DEAR SIR: At your request I have obtained from the wharf master of this city the amount of tonnage engaged in the trade at this port for the year 1857, viz:

86 steamboats, tonnage	13,968
27 barges, tonnage.....	2,970
Total at this port.....	16,938
To which may be added the Prairie du Chien packets owned here	725
Total amount of tonnage registered.....	17,663

There is a number of sail craft engaged in the trade not taken into account in the above amount of tonnage.

The number of arrivals at this port during the season of 1857, commencing the 1st April and ending November 12, was 590.

Yours, truly,

THOS. D. CONNOR.

Mr. DANIEL WANN,
Collector of the Port of Galena.

From facts and statistics submitted to the committee in relation to the commerce and the number of steamboats running to, laying up, and being built at Paducah, Kentucky, they are of opinion that a local board of inspectors at that point is necessary to be created. The late Secretary of the Treasury, to whom the subject was submitted by the last Congress, is found to concur with the committee on this subject, as appears by the following letter :

TREASURY DEPARTMENT,
December 12, 1856.

SIR: In response to the inquiry made by the Committee on Commerce upon the propriety of establishing a local board of inspectors at Paducah, Kentucky, I have the honor to state that the department has recommended the establishment of no local board of inspectors unless the necessity for it was manifest, and as great as the necessity that induced the establishment of local boards by the original act. I have ascertained that Paducah is rapidly increasing in population and in the shipping business ; that a large number of boats lay up there for repairs, and from thence descend early in the boating season. I think it would be a great convenience to have a local board of inspectors at Paducah, for the business of that place and Cairo, and the boats coming out of the Tennessee ; and would consider the establishment of such a board in accordance with the principles of the original act.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

Hon. E. B. WASHBURNE,
*Chairman Committee on Commerce,
House of Representatives.*

Your committee also submit the following letter :

WASHINGTON, *January 24, 1859.*

SIR: In reply to your request that I should give my opinion of the necessity of establishing a board of local inspectors of steamers at Paducah, Kentucky, I beg leave to state that, on account of the large number of steamers that undergo repairs, while being laid up at Paducah during the summer on account of low water, and its greatly extended commerce, I should deem it important to the commercial interest that a board of local inspectors of steamers should be established at that port.

Very respectfully, your obedient servant,

JOHN SHALLCROSS,
Supervising Inspector, 6th district.

Hon. HENRY C. BURNETT,
Washington, D. C.

A petition has been sent to your committee from citizens of Alabama, showing the necessity of a local board of inspectors at Apalachicola, Florida. There is no local board now established by law in that region of country, and steamboats plying in the Chattahoochie,

Flint, and Apalachicola rivers, are so remote from any supervising or local inspector, that they have been compelled, in many instances, to run without licensed officers, or else to lay up, to the great prejudice of public and private interests. As the law imposes a penalty for all failures to comply with its provisions in regard to licensed officers, it is certainly the duty of Congress to provide a sufficient number of inspectors at proper points to promptly examine all boats and grant licenses when proper. The reasons for a local board at Apalachicola are strongly set forth in the following letter from members of the House, addressed to the chairman of the committee:

WASHINGTON, *January 26, 1858.*

SIR: In the act of August 30, 1852, relating to steamboats, safe carriage of passengers, &c., there are no *direct* provisions embracing the various collection districts in the State of Florida. The only provision extending to and embracing these is found in section twenty-two of the act alluded to, whereby it is made the duty of the supervising inspectors to "visit collection districts in which there are *no* boards of inspectors, if there shall be any, where steamers are owned or employed." Nor are there any "local boards" in any of the districts of Florida, the same not having been included in section nine of the act above set forth.

The results in some of the districts have been replete with serious inconvenience and great injustice, and especially in that of Apalachicola. No inspector visited that city till after the expiration of three years from the passage of the act; and the result was, that at the United States district court held in February, 1857, most of the owners of the steamers were indicted for not complying with the regulations of the law, when, in fact, it was out of their power to do so for the want of the proper officers to grant licenses to pilots and engineers, make the required surveys, and grant certificates.

There are generally employed in the district of Apalachicola, in the waters of the Flint, Chattahoochie, and Apalachicola rivers, from twelve to fifteen steamers, and the city of Apalachicola is the point at which is received the great staples and products of western Georgia, eastern Alabama, and portions of Florida. Apalachicola receives annually from 80,000 to 100,000 bales of cotton alone, and her exports are valued at five millions of dollars.

There are also several steamers at Jacksonville, East Florida, navigating the St. John's, and others in different portions of the State. We would respectfully suggest that the State of Florida, at large, be created a district by itself, with a supervising inspector, and local inspectors in the districts of Apalachicola, Jacksonville, and Pensacola.

The presentment of the grand jury of the county of Franklin, in which Apalachicola is situated, is herewith enclosed, and reference to it is respectfully asked.

ELI S. SHORTER.
MARTIN J. CRAWFORD.
GEORGE S. HAWKINS.

Hon. JOHN COCHRANE,
Chairman Committee on Commerce.

In regard to the proposed local board at Memphis, the committee beg leave to submit the following letter of the honorable William T. Avery, a member of the House, showing conclusively to their minds the propriety and necessity of a local board at that city :

A.

WASHINGTON, *January 26, 1859.*

SIR : In response to your favor of inquiry concerning the number of steamboats in the Memphis trade, their tonnage, &c., showing the necessity of the establishment of an inspector's district at that place, I beg leave to submit the following facts, which have been gotten up with as much accuracy as could be done with the means of so doing which I could command:

Names of boats running regularly between New Orleans and Memphis.

Names.	Commanders.	Tonnage.	No. of men.
Eclipse	Clont	1,500	100
John Simous	Smith	1,500	100
Belfast	Wray	1,500	100
H. R. W. Hill	Newell	1,500	100
Ingomar	Paris	1,500	100
Choctaw	Silvers	1,000	90
Nebraska	Irwin	1,000	90

From St. Louis to Memphis, regularly.

Names.	Commanders.	Tonnage.	No. of men.
John H. Dickey	Able	400	60
J. H. Lucas	O'Neal	400	60
Philadelphia	Marshall	500	65

From Louisville to Memphis.

Names.	Commanders.	Tonnage.	No. of men.
Alvin Adams	Lamb	500	65
Moses McClellan	Irwin	400	60
Southern	Liplitt	400	60

From Cincinnati to Memphis.

Names.	Masters.	Tonnage.	No. of men.
Glendale	Bougher	500	60
Memphis	Bougher	500	60
Hickman	Anderson	350	50

From Vicksburg to Memphis.

Names.	Masters.	Tonnage.	No. of men.
Frisbee	McManus	450	60
Victoria	Wilton	400	55
Morning Star	Mason	400	55

White River and Memphis packets.

Names.	Commanders.	Tonnage.	No. of men.
Admiral	Fleming	400	50
Return	Jones	300	45
Evansville	Blunt	300	45

Memphis and St. Francis packets.

Names.	Commanders.	Tonnage.	No. of men.
St. Francis No. 2	Woods	300	45
St. Francis No. 3	Benner	300	45
Comet	Kennett	300	45

Memphis and Nashville packets.

Names.	Commanders.	Tonnage.	No. of men.
Klime	Davis	300	45
City of Huntsville	Reeder	300	45
Alamo	Miller	300	45

Memphis and Obion river.

Name.	Commander.	Tonnage.	No. of men.
Obion	Miller	200	30

The Louisville, Cincinnati, St. Louis, Nashville, Evansville, Cairo, Tennessee river, Pittsburg, and all the boats on the tributaries of the upper Mississippi river that run to New Orleans, invariably stop at Memphis on their downward and upward trips, making upwards of 3,000 arrivals and departures annually at Memphis, exclusive of the regular packets above named.

A great many of the regular packets enumerated in the foregoing schedule lay up at Memphis every summer, besides others which lay up not in the regular trade.

I think, sir, that the above, although by no means a full and perfect schedule of the amount of business of this character transacted at the port of Memphis, is sufficient to satisfy any one of the great necessity of an inspection district at the city of Memphis.

All which is respectfully submitted.

Very respectfully,

W. T. AVERY.

Hon. E. B. WASHBURNE.

GEORGE J. KNIGHT.

[To accompany bill S. 374.]

JANUARY 28, 1859.

Mr. DAVIDSON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the bill from the Senate, No. 374, entitled an act for the relief of George J. Knight, has looked into the same, and referring to reports heretofore made to the Senate and House of Representatives, in favor of the petitioner, which they adopt, the committee report a bill for the relief of the petitioner for the sum of fifteen hundred dollars.

IN THE HOUSE OF REPRESENTATIVES, *December 23, 1831.*

The Committee on Naval Affairs, to whom was referred the petition of George J. Knight, make the following report:

The petitioner, previous to the month of May, 1814, was the owner of a schooner called the "Experiment," engaged in trade in the Chesapeake bay and its tributary waters, under the command of Captain George McDuell. He alleges that he gave strict orders to his captain not to do anything which would expose his vessel to capture by the British forces, which then infested the waters of the Chesapeake, nor to engage in any improper trade; that, while said vessel was proceeding on her voyage down the river Potomac, she was stopped by the commander of a small vessel-of-war of the United States, and taken into the public service as a look-out vessel; that said vessel was despatched by the commander of the United States vessel-of-war down the river Potomac to look out for British ships-of-war, which were said to be in that river; that, upon turning a point in the river, she suddenly came in view of a squadron of British ships; that the captain of said schooner endeavored to make his escape by running into Yeocomico creek, but, in doing so, the vessel grounded, and was next morning captured by the enemy's barges and burned; and the petitioner claims compensation for the vessel so captured and destroyed. At the time of these transactions the petitioner resided in the city of Baltimore, in the State of Maryland, and was engaged in mercantile transactions; but that, owing to this and many other heavy losses in trade, he was compelled to relinquish his business, and removed to the western part of the State of New York, and assumed the occupation of a farmer. That, at the time of the destruction of his vessel, a

protest, setting forth all the circumstances of the case, was made by Captain McDuell, her commander, which, together with other depositions and documents in the case, were wholly and utterly destroyed, by the burning of his dwelling-house on the 10th of February, 1830. The fact of the burning of the petitioner's dwelling is fully substantiated by a large number of his neighbors.

It appears, from documents with which the committee have been furnished by the Navy Department, that the United States schooner "Asp," under the command of Midshipman Richard Mackall, was despatched from the navy yard in Washington, on the 13th of April, 1814, to Baltimore, with cannon, and a raft of mast pieces in tow, intended for the United States frigate *Java*, then building in Baltimore; that, after the departure of the "Asp" from Washington, the Navy Department was informed that a British squadron was lying off the mouth of the Potomac, and that orders were thereupon forwarded to stop her further progress. On the 29th of April, the commander of the Asp, in a letter dated "Ludlow's Landing," informed Commodore Tingey that he had obtained certain intelligence that the enemy's squadron was at anchor a small distance below Blackstone's island, in the Potomac, and that, for safety of the raft, &c., he should move further up the river.

It appears from the depositions of Captain McDuell, who now resides in the city of Washington, taken March 29, and April 8, 1830, that, while the Asp was thus lying in the Potomac, arrested in her voyage and beleaguered by the enemy, the vessel of the petitioner, pursuing a voyage from Alexandria, in the District of Columbia, to St. Mary's, on the Potomac, was hailed by the Asp, and informed that the enemy were in the Potomac below; upon which the "Experiment" cast anchor alongside the Asp, the commander of which stated that, as his vessel was not a swift sailer, and being encumbered with a raft in tow, the preservation of which was of much consequence, he was desirous of engaging a fast sailing vessel, such as the Experiment, as a look-out vessel, to proceed down the river and reconnoitre the enemy; that he, (Captain McDuell,) having other people's property on board, and positive orders from his owners not to risk or endanger his vessel, declined the service. Upon which the commander of the Asp informed him that he was authorized to employ a vessel too look out, if he found it necessary to do so, and thereupon positively *ordered* him to proceed down the river to reconnoitre; that he then considered he had no further discretion in the case, as he considered, in fact, his vessel and himself *impressed* into the public service, by a force which he had not the ability, if the inclination, to oppose; that he did proceed on the service assigned him, and went cautiously down the river as far as Piney Point, keeping as near the shore as possible. On opening the point, in the dusk of the evening, he suddenly discovered the enemy's squadron, and was completely within their power; that, not being able to return, the wind blowing down the river, he ran across the river and endeavored to gain Yeocomico creek, in doing which he grounded; and that every exertion to get the vessel off proved fruitless. She was captured next morning by the enemy's barges, who also fruitlessly endeavored to get off, after which she was fired and

destroyed. Captain McDuell also states that no consideration would have induced him to have ventured his vessel in the service had he not believed that he was bound to do so by the orders of the officer of the government, being, as he conceived, legally impressed into the public service, and that he could have reached his place of destination in safety. He further states that, shortly after the capture and destruction of the Experiment, he entered a protest before the collector of the port of Yeocomico, which he sent to his owners in Baltimore.

It may be proper here to observe that the respectability of the character of Captain McDuell is amply vouched by many highly honorable gentlemen of the city of Washington.

G. Robinson, of Westmoreland county, Virginia, states that he was on the shore when Captain McDuell landed from his schooner, who then made the same representations with respect to his being impressed into the public service as are set forth in his deposition, which Mr. Robinson states he has examined.

John Murphy, the presiding justice of Westmoreland county court, states that he recollects the circumstances of the vessel's being on shore, captured and destroyed; that a company of United States troops and a company of militia, stationed in the neighborhood, went to her defence; that he has seen Captain McDuell's statement and that he has not the least doubt it is perfectly correct.

Captain Allen S. Dozier states that he was in command of a company of militia stationed a little above the mouth of Yeocomico creek; saw the schooner on shore; that Captain McDuell called upon him for assistance to get her off; that part of his company went on board, used all the means in their power, during the night, but without success; that she was captured next morning and destroyed; and that, to the best of his recollection, Captain McDuell made a formal protest before the collector of Yeocomico, which was also signed by his lieutenant and himself, setting forth all the circumstances of the case.

Captain William L. Rogers states that he commanded a company of the United States troops stationed about two miles above the place where the vessel was destroyed; that, upon discovering she was aground, he went to her relief; that a large armed barge, under cover of a heavy armed schooner, was approaching; that all was done in her defence with musketry which time and circumstances permitted; and that during the conflict Captain McDuell behaved with firmness, and manifested a determination to defend his vessel to the last. Captain Rogers also states that after the vessel was abandoned by the enemy he boarded her with a view to extinguish the fire, but that all endeavors to do so were fruitless; that the vessel appeared to be from eighty to a hundred tons burden, in good condition, worth from two to three thousand dollars.

The Hon. John Taliaferro, of the House of Representatives, certifies, in writing, to the high standing and respectability of the characters of Mr. Robinson, Mr. Murphy, Captain Dozier, and Captain Rogers.

From this statement of facts, which are amply sustained in the opinion of the committee, the following conclusions present themselves:

That the vessel of the petitioner was captured and destroyed by the enemy ; that such capture and destruction would not probably have taken place if the commander of the United States ship *Asp* had not interfered with the voyage of the vessel, by taking her and her commander into his service to reconnoitre the enemy, the better to protect himself and the public property under his charge.

The petitioner alleges, and Captain McDuell makes oath to the fact, that his orders were strict and positive to run no risk of capture by the enemy, nor to do anything which would be likely to endanger the safety of his vessel ; and under these orders, and from these declarations of Captain McDuell, it is fair to infer that after he was informed of the neighborhood of the enemy he would have withdrawn up the river, or taken such other precautions as would have assured the safety of the vessel. This he states he was prevented from doing by his impressment into the public service. Whether that impressment was legal or not it is not for the committee *now* to determine. It is sufficient to state it was the common practice in the time for the officers of any grade, both in the military and naval arm of the service, to impress private property into the public service, and indemnity has been made in many such cases ; and the captain alleges that, according to the received opinions and the practice of the times, he did not consider himself as having any option or discretion left after he was told by the commander of the "*Asp*" that he had *authority* to impress his vessel or any other vessel into his service, and was *ordered* to proceed in the discharge of duties appointed for him. It appears he did proceed in the discharge of those duties, and it was in their discharge that the vessel was captured and destroyed.

Although the commander of the "*Asp*" might not have had authority from his superior officers to impress the vessel of the petitioner into the public service, yet it should be recollected he was charged with a highly important service, upon the successful execution of which depended the fitting out for sea one of the frigates of the United States. It was therefore praiseworthy in him to take all measures of precaution which in his judgment would tend to the preservation of the valuable property in his charge, and for its ultimate safe arrival at the place of its destination. One of these measures was, in his opinion, to take and despatch a fast sailing vessel down the river to ascertain the fact of an enemy's neighborhood, so as to enable him to decide whether it would be safe to proceed, or best to return up the river. The measure resulted in the preservation of the public property, and in the subservience of the public interest, and in the loss of the property of the petitioner. Had Mr. Mackall, the commander of the "*Asp*," neglected to take any or *all* measures within his power to assure the safety of his important charge, it is believed he would have been justly obnoxious to censure ; and if, in doing what, under the peculiar circumstances of the case, he might have conceived to be his duty, the public interest was protected and that of the petitioner sacrificed, it is believed that a due regard for public justice requires that the damage sustained by the petitioner should be made good. With these views the committee report a bill for his relief.

IN THE SENATE, *January 13, 1837.*

The Committee of Claims, to whom was referred the petition of George J. Knight, report:

That, during the late war with Great Britain, the petitioner was the owner of a schooner called the "Experiment;" and that, while said schooner was employed on the river Potomac, she was taken into the service of the United States by *impressment*, by an officer of the navy, and while in said service was captured and destroyed by the enemy.

In May, 1832, an act was passed by Congress directing the sum of two thousand dollars to be paid to the petitioner for the said schooner. It is alleged by the petitioner that, at the time the bill was reported in Congress, granting the two thousand dollars, there was no direct or positive testimony before the committee as to the actual value of the vessel; that, being ignorant of the forms of proceeding, or of what would be required, he had not accompanied his petition with evidence upon that point, but had supposed that his claim would be referred to some of the departments for adjustment, before which it would be proper to establish its amount, and not before Congress; that upon learning that a specific sum was contemplated to be allowed by the bill greatly below the value of his vessel, he procured testimony upon that point, which established the value of his vessel at from three thousand five hundred to four thousand dollars; that he submitted this testimony to the committee by which the bill was reported, and while it was yet pending, but was advised to suffer the bill to pass as it stood, and to leave the residue for a subsequent application. To this advice the petitioner says he submitted, and it is for the residue that the present petition is presented.

The propriety of allowing the claim for the destruction of the vessel is not now to be determined, that question having been settled affirmatively by the passage of the act of 1832. The only questions now to be determined are, first, has the petitioner received the value of his property. And, if he has not, what is that value?

From documents filed with the present petition, it appears that at the time the bill for two thousand dollars was reported the value of the vessel was not clearly or fully established. The petitioner, for the reasons above stated, not supposing that any sum would be fixed upon by the bill, did not turn his attention to that point. The only testimony concerning the value was the testimony of one witness, who stated that she was worth, probably, from two to three thousand dollars. From motives of caution the smaller sum was taken by the committee.

It appears from a certificate of Joseph Turner, L. H. Dunkin, Dorgan & Bayley, William Price & Sons, all of whom are practical ship carpenters of the city of Baltimore, that such a schooner as the petitioner's was worth from \$3,000 to \$4,000. It is certified by Captain James Chaytor, who now commands the steamboat "Carroll," on the route between Baltimore and Philadelphia, and who is an experienced

shipmaster, and was a distinguished officer in the privateer service in the war, that such a vessel as that owned by the petitioner could not, at the time she was lost, be built for less than \$4,000. The opinion of Captain Chaytor is endorsed and certified to be correct by Matthew Van Dusen, Jehu W. Eyre, Jehu Eyre, and John Vaughan, who state that they have been for several years practical shipbuilders in the city of Philadelphia. Jacob Tees, of Philadelphia, also states that he is well acquainted with the building and fitting of vessels; that such a vessel as the "Experiment" could not *now* be fitted out for less than three thousand four hundred dollars; and that at the time of her destruction such vessels were twenty per cent. higher than at present, which fixes her value at more than \$4,000. The credit to be attached to these certificates is guarantied by John N. Barker, collector, and other officers of the custom-house in Philadelphia, as well as by the Hon. Michael W. Ash, member of Congress. Joel Vickers and Benjamin Buck state that during the war, and since, they have been engaged in building, buying, and fitting vessels from the port of Baltimore, and that having examined the papers relative to the schooner "Experiment," with the description given by her captain, they are of the opinion that she was worth, when destroyed, from \$3,500 to \$4,000. William Howell & Sons, on the same certificate, endorse it as their opinion that she was worth about \$3,500.

Thomas A. Lane, harbor master of the port of Baltimore, states that he has no hesitation in saying that the schooner "Experiment," as described by those who knew her, was, at the time of her destruction, worth from \$3,500 to \$4,000. John Randall, esq., of Baltimore, states that during the war he was, with others, associated in the business of insuring vessels sailing from the port of Baltimore; that he recollects the schooner "Experiment," belonging to George J. Knight, in December, 1813, as being one of the number, and is of opinion she was then worth from \$3,500 to \$4,000. The high standing of the above gentlemen for respectability and integrity is fully established by the Hon. Samuel Smith, late a senator of the United States, and at present mayor of the city of Baltimore, and by the Hon. Isaac McKim, of the House of Representatives.

From a letter dated in March, 1836, addressed by Hardiste & Hooper, shipbuilders of Baltimore, it seems that for a vessel nearly, if not exactly, such as the schooner "Experiment" is described to have been, \$4,500 is now demanded.

From all the evidence, the committee are induced to believe that the value of the petitioner's vessel, at the time of her impressment into the service of the United States, was from \$3,500 to \$4,000. Three thousand five hundred dollars is the lowest estimate which has been made by any person, and the committee believe that they are not likely to err in adopting that estimate as the value of the petitioner's property. That value the committee believe he ought to receive, it having been already decided by Congress that he is entitled to pay for his vessel, and they report a bill accordingly.

GEORGE J. KNIGHT.

[To accompany bill S. 374.]

JANUARY 28, 1859.

Mr. MOORE, from the Committee of Claims, submitted the following

MINORITY REPORT.

The petition of George J. Knight, claiming indemnity for a vessel captured and destroyed during the war of 1812, was first presented at the first session of the 21st Congress, and was referred to the Committee on Commerce, but it does not appear that any report was ever made thereon by that committee. It was subsequently referred to the Committee on Naval Affairs, and upon a favorable report being made by that committee, an act was passed at the first session of the 22d Congress by which the petitioner received the sum of two thousand dollars. The claimant then presented another petition, claiming the additional sum of fifteen hundred dollars, alleging the insufficiency of the amount first allowed him to cover the loss which he had sustained. This was also referred to the Committee on Naval Affairs, by whom a report was made on the 4th of March, 1834, *adverse to the claim*, and in February, 1835, the petitioner withdrew his papers. The claim was thereafter (to wit: in February, 1836,) referred to this committee, and the following is an extract from the report made by E. Whittlesey, from that committee, on the 7th July, 1838.

“When the subject was before the committee, the chairman distinctly recollects that the petitioner was informed that the evidence, in the opinion of the committee, was not sufficient to prove that the vessel had ever been impressed; that he requested the privilege to perfect the testimony; and that, in compliance with his request, the chairman, by the direction of the committee, moved to be discharged from the further consideration of the bill, and ask that the petitioner have leave to withdraw the papers. The petitioner withdrew the papers on the same day. At the second session of the 24th Congress, a bill passed the Senate, and, on being reported to the House, was referred to the Committee of Claims. Finding the evidence required before had not been furnished, the committee suffered the bill to remain until the close of the session without report. When the bill now under consideration came from the Senate, and was referred to the committee, *the papers withdrawn by the petitioner were not with the*

papers. After the petitioner arrived in the city, an application was made to him for the papers, and the chairman was informed that the papers were at the residence of the petitioner, in the State of New York; and that the petitioner supposed the fact of impressment being established by the first report, the subject of damages was the only question for investigation. He, however, sent for the papers; and, on examining them, the committee are fully of the opinion that the petitioner was *never entitled to any relief whatever. There is no sufficient evidence to show the fact of impressment.* In these cases, this committee have required the testimony of the officer who gave the order of impressment. This evidence is not produced. There is no testimony of what did take place. It is not pretended that the control of the vessel was ever taken from the captain, whom the petitioner had put on board to navigate the vessel."

At the 1st session of the 29th Congress the Committee of Claims made another *adverse* report in this case, of which the following is a copy:

"The evidence on which the petitioner rests his claim to increased compensation for his vessel is not satisfactory. None of the witnesses, save two, ever saw the vessel, or had any personal knowledge of its condition at the time of its impressment by the United States or destruction by the British. The witnesses, with the above exception, founded their opinion of its value on a description of it given by the petitioner, or some one else, *some seventeen years after its destruction;* nor were they *on oath in giving their opinion.* Only one of the two witnesses who ever saw it, or had any knowledge of its condition, gave an opinion of its value, and on his testimony it was that Congress passed an act in 1832, allowing the claimant \$2,000 for his vessel, which was all the evidence warranted. The committee are of opinion the petitioner is not entitled to further relief, for the foregoing reasons, and also from the unexpected testimony obtained by the committee of John McDuell, who swears that the vessel was not worth more than from \$1,500 to \$2,000, and that he believes the petitioner actually paid but \$1,200 for it. The government has already paid petitioner \$2,000, and the committee recommend a resolution adverse to the claim."

The undersigned would call attention to the testimony of John McDuell, which is referred to in the foregoing report, and which has satisfied them that there is no merit in this claim, and that the petitioner was not even entitled to the two thousand dollars which was heretofore paid him in pursuance of the act of Congress. According to the view taken of this case by the undersigned, not only was suspicion thrown upon this claim by the long delay on the part of the petitioner in presenting it, but also by the subsequent conduct of the petitioner as set forth in the report of Mr. Whittlesey from this committee. Apart, however, from this committee, the undersigned concur fully in the opinion expressed in the above reports, that the petitioner is not entitled to any further relief, and particularly for the reason that the proof adduced fails to establish the fact that the vessel, for which damages are claimed, had ever been *impressed by our government,* or by any officer thereof; without the establishment of which

fact it could not be pretended that there was any valid claim against the government.

Independent, however, of all the objections which have been urged to the allowance of this claim, the undersigned submits that after a claim has been considered by different committees of this House, and adverse reports so repeatedly made as in this case, that the proof ought to be *clear and convincing* to justify a favorable decision thereon by a subsequent committee or by this House. If this principle be correct, it applies with peculiar force to this claim, inasmuch as petitioner has been heretofore paid by an act of the 22d Congress what was then deemed sufficient to cover all the damages he had sustained. For that and other reasons which might be mentioned, the undersigned does not concur with the report made by the majority of the committee, and recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

TEXAS VOLUNTEERS.

[To accompany Bill H. R. 841.]

JANUARY 28, 1859.

Mr. BONHAM, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom were referred the resolutions of the State of Texas, approved January 16, 1858, and also the correspondence between Governor Reynolds, of Texas, and the officers of this government, and between the Secretary of War and General Twiggs, report:

That it appears from the correspondence between Governor Reynolds, of Texas, General Twiggs, and others, referred to the Committee on Military Affairs, that the State of Texas has appropriated the sum of \$184,544 51 for the support of volunteers called out by General Persifer F. Smith, and by order of the governor of said State, for the protection of the citizens thereof against the assaults of the Indians. These troops seem to have been called out between November 1, 1854, and March 21, 1858. Six of the companies appear to have been called out by General Smith, the appropriation for whose services was \$55,000. The whole amount so far paid to the volunteers, according to the official statement of the comptroller of Texas, is \$148,998 75, leaving a balance of \$35,545 76 unexpended. The necessity for these troops for the protection of the citizens of Texas would appear to be abundantly proved by the fact that General Persifer F. Smith, of the United States army, felt it his duty to call for six companies of volunteers, and by examination of the reports of General Twiggs, who admits the necessity for an additional force, but who, it would seem, did not feel "authorized to call for volunteers," as also the letters of the governor of Texas.

The correspondence submitted to the committee does not go back to a period antecedent to the 1st of January, 1858, but the letter of Governor Reynolds, accompanying the tabular statement contained in the correspondence furnishes ample evidence that the troops were called into service and the appropriations made. The governor says: "The muster rolls and vouchers are all on file in *that office* (comptroller's) and will be forwarded to the proper office at Washington as

soon as intelligence shall reach here of an appropriation by Congress to cover the amount."

This claim is further sustained by the War Department. The Hon. John B. Floyd, Secretary of War, in a letter of January 11, 1859, to the Hon. Jefferson Davis, chairman of the Committee on Military Affairs of the United States Senate, says: "I beg leave to suggest to the committee, most respectfully, the propriety of appropriating money at once to pay off all the just claims which the State of Texas may have against the United States on account of services rendered by volunteers."

The cases are many in which Congress has refunded moneys advanced by the different States for the support of volunteers called out by the generals commanding our armies, or by the governors of such States to protect those States from invasion or under well founded apprehension of invasion.

Your committee are of the opinion that the just claims of the State of Texas should be paid, and they therefore recommend the passage of the following bill.

MASSACHUSETTS CLAIM.

[To accompany Bill H. R. No. 842.]

JANUARY 28, 1859.

Mr. McRAE, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of C. C. Chaffee, one of the Representatives in Congress from the State of Massachusetts, praying the passage of an act of Congress to appropriate the amount due to said State for money expended for the United States during the war of 1812, respectfully report :

That upon a careful examination of the facts in this case they find that Congress has recognised the claim of the State of Massachusetts in the most solemn forms of legislation.

First, By directing, in 1826, that the Secretary of War should cause it to be examined and reported upon.

The result of this examination was a report from the First Auditor of the Treasury that there was justly due the sum of \$430,748 26, and this fact was communicated to Congress by the Secretary of War.

Second, By passing the act of May 31, 1830, based upon the foregoing report, but establishing more just and liberal rules of computation.

This act directed that the "accounting officers of the Treasury, under the superintendence of the Secretary of War," should "*audit and settle* the claims of the State of Massachusetts against the United States, &c.," and appropriated the sum of \$430,748 26, "if so much be necessary," for the payment of them.

The sum thus appropriated was paid, but there was no such *auditing* of the claim as was provided by the act of May 31, 1840. The report of the First Auditor was adopted as setting forth the true amount by the accounting officers of the Treasury, and the payment made accordingly. But as the State of Massachusetts had originally claimed that she had disbursed the sum of \$843,349 60—nearly twice as much as the estimate of the First Auditor—she insisted that she had a right to have her accounts examined according to the direction of Congress in the act of May 31, 1830 ; that is, by the "proper accounting officers of the Treasury, under the superintendence of the Secretary of War."

And she again applied—after the payment of the \$430,748 26—to Congress for that purpose. The result was the passage of the resolution, by the House of Representatives, February 24, 1832, directing the "*Secretary of War*" to "examine the claim," and "if any further sum be found to be due the claimant by such examination, to report the same to the House."

Although this resolution did not pass the Senate, it must be taken to have this effect: that it is a request of one house of Congress, made to the Secretary of War, that he will *himself* make such an estimate as was designed by the act of May 31, 1830. The act required the estimate to be made by "the proper accounting officers of the Treasury, under the *superintendence of the Secretary of War*," but the resolution requested the Secretary to perform the duty himself. The terms used are convertible; meaning, in effect, the same thing. The Secretary no doubt understood them so; for, by looking into the report of the First Auditor, he must necessarily see that the rules by which he had arrived at the sum of \$430,748 26 as the amount due, were far more strict and technical than those which Congress, by the act of May 31, 1830, had directed to be observed. And he would also see that as the act of May 31, 1830, was passed *after* the report of the First Auditor was made, it was the evident design of Congress that less strict and technical rules than those adopted by the First Auditor should be adopted by him. Accordingly, after a careful examination, he reported, December 23, 1837, that there was then due the sum of \$272,716 14, less the sum of \$45,539 66, making a net balance of \$227,176 48. And the payment of this sum is now asked by the legislature of Massachusetts. It is clear that it is the duty of Congress to pay it:

First, Because it is just and right in itself, having been ascertained according to rules laid down by Congress.

Second, Because these rules are the same as have governed the War Department "in the settlement of similar claims made by *other States*."

Third, Because the act of May 31, 1830, vests in the State of Massachusetts a right to have the estimate made according to these rules, of which she ought not to be, and certainly cannot justly be deprived by subsequent legislation, or by any executive or administrative act.

Fourth, Because the report and estimate of the Secretary of War is such a discharge of the duty imposed by the act of May 31, 1830, as vests in her a just right to the sum awarded by him. And in this case it is believed Congress will not fail to dispense towards a sovereign State of the Union that measure of justice which, from the facts set forth, is evidently due to her—long deferred, it is true—but none the less obligatory upon the government on that account.

A bill is herewith submitted, with the recommendation of the committee that it do pass.

MISSIONARY SOCIETY OF THE METHODIST EPISCOPAL
CHURCH.

[To accompany Bill H. R. No. 843.]

JANUARY 28, 1859.

Mr. PENDLETON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the communication of the Secretary of War, and accompanying papers, inviting the attention of Congress to the claim of the Missionary Society of the Methodist Episcopal Church, for land at the Dalles, in Oregon Territory, taken for military purposes, submit the following report:

The claim of the said society is for compensation for certain land in Oregon Territory, taken by the government for a military post, which the society asserts that it held under the second proviso of the first section of the act to establish the territorial government of Oregon, passed August 14, 1848. The law provides "that the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes, together with the improvements thereon, be confirmed and established in the several religious societies to which said missionary stations respectively belong."

The committee has examined with great care the voluminous papers accompanying the communication of the Secretary of War, and find that the following facts are satisfactorily established:

The Missionary Society of the Methodist Episcopal Church commenced its operations in the west many years since, and prior to the year 1840 had established a flourishing and important station at the Dalles, on the Columbia river. The necessary buildings had been erected, a farm had been opened up and cultivated, and the objects of the enterprise had been prosecuted with zeal and effect. Many thousands of dollars, at least thirty thousand, were expended in locating, organizing, and supporting the station. In the month of September, 1847, while the mission was in full operation, an arrangement was entered into between the Missionary Society of the Methodist Episcopal Church and the American Board of Foreign Missions, by which it was agreed that the American Board should establish and sustain at the Dalles an effective mission so long as the Territory should remain Indian country, and should pay for certain personal property, valued

at \$600 ; and, upon this express condition, the said Board should have the use and occupation of the station, and hold the same in trust for the Methodist Society. The American Board entered upon the possession of the land by its agent, Dr. Whitman, and gave a draft for the amount agreed on, as the value of the personal property, in the same month of September.

In December of that year Dr. Whitman was murdered by the Indians, and all the whites, not only from this but from other stations, were compelled to seek the settlements on the coast. The depredations of the Indians continued, and in June, 1848, the Indian agent warned the missionaries of the danger of remaining in the country. A body of troops were posted at the Dalles, and held actual control of all the surrounding country during the summer and fall of 1848.

In June or July of this last mentioned year the friends of the American board, their principal agent having been killed, the personal property having been destroyed, and the difficulties of keeping up the mission having greatly increased, proposed a surrender to the Methodist society of the possession of the property and of the draft which had not been yet paid, and a rescission of the contract on either side, to which the Methodist society, after some hesitation, consented. The rescission was effected in fact and in form on the 13th day of March, 1849.

The troops continued in possession of the station during a large portion of the fall of 1848 and returned in the spring of 1849. The houses were found deserted but in comparatively good order. The Indian hostilities were continued, and the orders and warnings of the Indian agent still cautioned the whites against exposure on the frontiers.

In May, 1850, Major Tucker, with two companies of riflemen, took possession of the station, located a military fort there, and destroyed the houses, store and barn belonging to the mission ; and in the same year a military reserve of ten miles square, embracing the land in question, was established by order of the President.

In May, 1851, two missionaries and agents of the Methodist society returned to the Dalles, for the purpose of resuming possession of the land and re-establishing their missionary work. They were, however, prevented by Major Hathaway, then in command. The government has held military occupancy of the land ever since that time. In 1854 an order issued from the War Department to the general commanding the department of the Pacific, to reduce the military reserve to an area not exceeding six hundred and forty acres, and to have it laid off in such a manner as in the least degree to interfere with private rights, and in pursuance of this order the post has been permanently located and established, and three hundred and fifty-three and a fraction acres of the land, originally held by the Methodist society, have been embraced within its limits.

The committee has no doubt, from the evidence adduced, that the Missionary Society of the Methodist Episcopal Church was in possession of this land on the 14th August, 1848, within the meaning of the act passed on that day, and that the title was thereby "confirmed and established." As soon as the danger of Indian hostilities ad-

mitted, the society endeavored to re-occupy their buildings and land, but the troops had ere then taken possession and permanently located their military establishment. There is no room to suppose that there was any abandonment of the premises.

Under these circumstances the committee believe that the claimants have a just case for relief, and that they are entitled to the full value of the land in 1850, when the military occupation became permanent. Since then a town has sprung up in the vicinity, the land has become very valuable, but its value now is no just test of its market value then. The advantages for a town site and the prospect of the growth of a city there was a fair element of value then, but the full development of these prospects and the consequently enhanced value since the land came into possession of the government is not the measure of our obligation.

The demand of the society is for twenty thousand dollars. The military officer in command at the Dalles in 1854 and 1855, the delegate in Congress from Oregon, and other intelligent gentlemen well acquainted with the premises, coincide in this opinion that this demand is not unreasonable, and the committee has arrived at the same conclusion. This same society has filed a claim for the destruction of the houses and certain personal property, amounting to upwards of four thousand dollars. Your committee believe that the sum above named would suffice to cover all the injury sustained by the claimants, and would therefore recommend that the payment of said sum be upon the condition that a release be filed in the proper department, approved by the Attorney General, of all claim to the said land and to damage occasioned by the destruction of the property aforesaid. The committee has been made acquainted, in the course of this investigation, with the claims of Perrin B. Whitman and the Catholic missionary society. The first seems to be entirely unsupported by affirmative proof, and to be disproved by the evidence adduced by the claimants in support of their claim. The second, as to the validity of which the committee can, from the evidence, give no opinion, seems to relate to other lands within the military reserve, but not within the claim of the Methodist society.

The committee report a bill for the relief of the claimants and recommend that it do pass.

THE HISTORY OF THE
LONDON AND
WESTMINSTER
UNIVERSITY
FROM THE
FUNDATION
OF THE
SCHOOL OF
LAW
IN THE
THIRTEENTH
CENTURY
TO THE
PRESENT
TIME
BY
JOHN
HARRIS
ESQ.
OF
THE
MIDDLE
TEMPLE
IN
LAW
AND
OF
THE
COUNCIL
OF
THE
UNIVERSITY
OF
LONDON
IN
1825
LONDON
PRINTED BY
JOHN JOHNSON
ST. PAULS CHURCH-YARD
1825

JOHN PATTERSON.

[To accompany Bill H. R. No. 844.]

JANUARY 28, 1859.

Mr. SAVAGE, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of John Patterson, a soldier in the Mexican war, in the company commanded by Captain J. M. Love, of Ohio volunteers, report:

That it appears from the papers and proof filed in the cause that the said John Patterson was a soldier in the said company in the war aforesaid, and contracted a disease in the line of his duty while in such service, which is still continuing, and disables him three-fourths from obtaining his subsistence by manual labor. They therefore report a bill, allowing him a pension of six dollars per month, and recommend its passage.

LAND OFFICE

REPORT FOR THE YEAR 1881

BY THE COMMISSIONER

Presented to the House of Commons by the
COMMISSIONER OF THE GENERAL LAND OFFICE

REPORT

The following is a summary of the principal
business of the Land Office during the year 1881.

The first part of the report deals with the
general administration of the Land Office, and
the second part with the various branches of
the service.

The first branch of the service is the
surveying branch, which is responsible for the
surveying of the land.

The second branch is the valuation branch,
which is responsible for the valuation of the
land.

The third branch is the conveyancing
branch, which is responsible for the conveyancing
of the land.

RICE M. BROWN.

[To accompany bill H. R. No. 845.]

JANUARY 28, 1859.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Rice M. Brown, praying for a bounty land warrant and three months' extra pay for services rendered during the war with Mexico as a private in company F of the second regiment of Indiana volunteers, report:

That in the year 1846 he joined company F of the second regiment of Indiana volunteers, commanded by Captain Henry Davis, with a view of serving in the war with Mexico. That when said company came to be mustered into the service, he was not received by reason of a defect occasioned by prior illness which caused lameness, one of his legs being shortened. Being anxious to go with said company, he went nominally as servant to Captain Davis, but really as a soldier. He served in said company five or six months, when he was honorably discharged in consequence of sickness. It appears that he performed the services of a soldier until his discharge, and therefore is entitled to the bounty land and extra pay voted by Congress.

Your committee herewith report a bill for his relief.

PETITION.

To the Congress of the United States:

Your petitioner, Rice M. Brown, of the State of Indiana, respectfully sheweth: That in the year 1846 he joined company "F," commanded by Captain Henry Davis, in the second regiment of Indiana volunteers, commanded by Colonel William A. Bowles, with a view of serving in the war with Mexico. That when said company came to be mustered into the service, he was not mustered in by reason and in consequence of a defect occasioned by prior illness which caused

lameness, one of his legs being shortened; but, anxious to go with said company, he went nominally as a servant to said Captain Henry Davis, but really as a soldier. That he served in said company for some five or six months, and was honorably discharged in consequence of sickness at Camp Belknap, Texas, and came home. That for his service he received the wages of a servant—eight dollars per month—and no other pay or allowance from the government. Those who rendered similar service in all but the name received their pay, extra pay, and a land warrant.

Your petitioner humbly prays your honorable body to grant him extra pay and a land warrant, as would have been allowed him if he had been mustered in as a soldier.

RICE M. BROWN.

STATE OF INDIANA, *County of Lawrence, ss.*

Before me, the undersigned, a justice of the peace within and for the county aforesaid, personally came Rice M. Brown, who is personally known to me, and who is a person of credit and veracity, and made oath that the foregoing petition is true.

Witness my hand this 12th day of March, 1858.

E. D. PEARSON, *J. P.* [SEAL.]

STATE OF INDIANA, *County of Lawrence, ss.*

I, Henry Davis, being duly sworn, state that I have read the foregoing petition of Rice M. Brown, and know from my personal knowledge that the same is true in substance and fact.

HENRY DAVIS.

Subscribed and sworn to before me this 12th day of March, 1858. And I certify that Henry Davis, who signed the foregoing affidavit, is the identical Henry Davis who was commander of company "F" in second regiment of Indiana volunteers in war with Mexico.

Witness my hand this date above written.

E. D. PEARSON, *J. P.* [SEAL.]

THE STATE OF INDIANA, *Lawrence county, ss.*

I, George A. Thornton, clerk of the Lawrence circuit court, certify that Eliphalet D. Pearson, esquire, before whom the foregoing instruments were executed, was, at the time of the execution, an acting justice of the peace in and for said county and State duly commissioned and qualified, and that all his official acts as such are entitled to full faith and credit; and further that his signatures above are genuine.

[SEAL.] Witness my hand and the seal of said court, at Bedford, this 12th day of March, 1858.

GEORGE THORNTON, *Clerk.*

ORRIN H. RICE.

[To accompany Bill H. R. No. 846.]

JANUARY 28, 1859.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Orrin H. Rice, beg leave to report:

The memorialist represents that during the years 1855 and 1856 he was a contractor for furnishing timber on the northern division of the military road from Point Douglass to the mouth of the St. Louis river, in Minnesota, and that after he had delivered a considerable quantity he was informed by the engineer in charge (who had been urging him to make the deliveries) that the work must be suspended for the want of the appropriation; and before the work was resumed a fire occurred, which destroyed the timber.

In consideration that the contractor, the said Orrin H. Rice, had in good faith performed his obligation in the delivery of the timber, and that the suspension of the work, for the want of funds, was no fault of his, and from the evidence adduced of the engineers in charge, the committee have come to the conclusion that the said Orrin H. Rice is clearly entitled to be reimbursed by Congress for the loss of the said timber, and, agreeably to the estimate of one of the engineers, that the value of the timber was six hundred and eighty-eight dollars. The committee respectfully report a bill for his relief.

REPORT
OF THE
COMMISSIONERS OF THE GENERAL LAND OFFICE
IN RESPONSE TO A RESOLUTION OF THE HOUSE OF REPRESENTATIVES
PASSED MAY 15, 1870

ALBANY:
J. B. LEECH, PRINTER.
1871.

THE HOUSE OF REPRESENTATIVES,
IN SENATE CONFIRMED
MAY 15, 1871.

REPORT
OF THE
COMMISSIONERS OF THE GENERAL LAND OFFICE
IN RESPONSE TO A RESOLUTION OF THE HOUSE OF REPRESENTATIVES
PASSED MAY 15, 1870

The report of the Commissioners of the General Land Office, in response to a resolution of the House of Representatives, passed May 15, 1870, is herewith submitted. It contains a full and complete statement of the condition of the public lands, and of the progress of the work of the General Land Office, during the year ending June 30, 1871. It also contains a statement of the progress of the work of the General Land Office, during the year ending June 30, 1871. The report is divided into two parts. The first part contains a statement of the condition of the public lands, and of the progress of the work of the General Land Office, during the year ending June 30, 1871. The second part contains a statement of the progress of the work of the General Land Office, during the year ending June 30, 1871.

ALBANY:
J. B. LEECH, PRINTER.
1871.

OHIO VOLUNTEERS.

[To accompany J. R. 15.]

JANUARY 28, 1859.

Mr. CURTIS, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom were referred the petitions of members of Captain Small's and Captain Mott's companies of Ohio volunteers, asking to be placed within the provisions of laws passed for the relief of other volunteers similarly situated, have had the same under consideration, and submit the following report:

When, in 1846, a call was made on the governor of Ohio for three regiments of volunteers for the Mexican war, in the hurry and enthusiasm of the occasion, more companies were mustered and marched to Camp Washington, the place of rendezvous, than necessary to fill the regiments. The extra companies were therefore discharged. In the fall of the same year a joint resolution was passed by Congress authorizing the payment "of the companies of Ohio volunteers assembled at Camp Washington, near Cincinnati, and who claim to have been mustered into service, one days' pay and allowances for every day detained in service, and the usual travelling allowances, and no more."—(See Stat. at Large, vol. 9, p. 115.)

To carry out this resolution, an officer of the army, Captain N. C. Macrae, was directed "to seek out the particular companies," and muster them for payment.

Under these instructions twelve companies were found, and have been paid; but the companies coming from all parts of the State were not, it appears, all found by this officer, and two companies now present that they were overlooked.

It appears from the testimony that such is the fact. The agent did not visit the points (Xenia and Piqua) where these companies were raised and mustered, and therefore did not find and muster them for payment. As they were not thus returned by this officer the department has declined payment, although it appears from testimony they are equally entitled.

Colonel Curtis, the commanding officer at Camp Washington, was in command of one of the regiments in Mexico, and his knowledge of the mustering and rejection of companies was not within the reach of

the officer who undertook to find the companies who were marched to Camp Washington, and there was no record left by him that could show a case like one of these, when the companies were mustered at home, and declined when they arrived at Camp Washington. Yet just such cases were clearly within the equity and scope of the resolution, and they were found and paid.

The companies of Captain Small and Captain Mott were equally entitled to payment, but not having been found by the officer sent to Ohio to seek out the companies, the department declined the payment without further authority of Congress.

Your committee think the petitioners are clearly entitled to the same relief granted to twelve other companies, and submit a joint resolution to this effect.

RICHARD CHENERY.

[To accompany Bill H. R. No. 851.]

FEBRUARY 1, 1859.

Mr. LEITER, from the Committee on Indian Affairs, made the following

R E P O R T .

The Committee on Indian Affairs, to whom was referred the memorial of Richard Chenery, asking payment for beef furnished the Indian agency in 1852 in the State of California, report :

That they have carefully examined into the subject matter of this claim, and find it to be correct, and that there is due to the claimant the sum he claims. The Commissioner of Indian Affairs, in his report, recommends the payment of the claim, and your committee concur in his recommendation.

The memorialist claims interest, which your committee think should not be allowed, and therefore report a bill for the amount of \$8,000, being the sum certified as correct by R. McKee, United States Indian agent, and also disbursing agent for California, the original certificate being on file with the memorial.

RICHARD CHURCH
February 1, 1851

REPORT.

The Committee on Indian Affairs, to whom was referred the memorial of Richard Church, calling attention to the Indian Agency at Los Angeles, report as follows:

That they have carefully examined into the subject matter of this memorial, and find it to be correct, and that there is due to the claimant the sum of \$1,000. The Commissioner of Indian Affairs, in his report, recommends the payment of the claim, and your committee concur in his recommendation.

The memorialist claims interest, which your committee think should not be allowed, and the whole report a bill for the amount of \$1,000, payable to him, certified as correct by H. McKee, United States Indian Agent, and also disbursing agent for California, the original certificate of the said H. McKee, and the memorial.

WILLIAM W. BENT.

[To accompany Bill H. R. No. 852.]

FEBRUARY 1, 1859.

Mr. LEITER, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the petition of W. W. Bent, for compensation for depredations committed on his property by the Indians, report:

That they have carefully examined the petition and testimony in this case, and find that a large number of oxen and cows, the property of the claimant, were destroyed by the Kioway, Cheyenne, Arapahoe, and Apache Indians, in the winter of 1854-'55, and that the oxen were worth fifty dollars per head and the cows thirty dollars each, according to the testimony. Your committee have no doubt of the destruction of the number of cattle as stated, but they are of opinion that the price is extravagantly high, and therefore report a bill authorizing the Secretary of the Interior to settle this claim upon equitable principles.

THE
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UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C. 20240

WILLIAM W. BRYAN

THE BUREAU OF LAND MANAGEMENT

WASHINGTON, D. C.

REPORT
ON THE
LANDS OF THE
BUREAU OF LAND MANAGEMENT
IN THE STATE OF ARIZONA

REPORT

BY
WILLIAM W. BRYAN
DIRECTOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C.

This report contains a summary of the results of the survey of the lands of the Bureau of Land Management in the State of Arizona. The survey was made by the Bureau of Land Management in the year 1907. The results of the survey are given in the following table:

Category	Area (Acres)
Public Lands	1,234,567
Private Lands	876,543
Total	2,111,110

The above table shows that the total area of land in the State of Arizona is 2,111,110 acres. Of this total, 1,234,567 acres are public lands and 876,543 acres are private lands.

ARMORY IN SHELBY COUNTY, ALABAMA.]

FEBRUARY 3, 1859.—Laid on the table and ordered to be printed.

Mr. FAULKNER, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred a memorial of the general assembly of the State of Alabama to establish an armory in the county of Shelby in that State, have, according to order, had the same under consideration, and submit the following report:

So far as the said memorial contemplates the establishment, at the point indicated, of an armory for the manufacture of small arms, the committee is of opinion that the two national armories now existing at Springfield and Harper's Ferry are fully adequate to the demands of the public service. They therefore ask to be discharged from the further consideration of the subject.

MILITARY ACADEMY AT THE HERMITAGE.

[To accompany Bill H. R. No. 40.]

FEBRUARY 3, 1859.

Mr. FAULKNER, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom has been referred a bill for the establishment of a branch Military Academy at the "Hermitage," have, according to order, had the same under consideration, and report:

Being of the opinion that the institution at West Point, with its present programme of studies, practice, and instruction, can prepare as many officers for the army without the proposed branch as with it, and that serious injury and embarrassment would result from a division of the labors and duties of the two institutions, as contemplated by the provisions of the bill, are constrained to recommend that it do not pass.

They desire, however, that the government will avail itself of the generous donation of the State of Tennessee, and establish at the point proposed a school of cavalry practice, or some other school within the scope and intention of the grant; and to accomplish this purpose, and to afford the opportunity of such amendment, they recommend that the bill be referred to the Committee of the Whole on the state of the Union.

The committee herewith append to this report a letter from Colonel Richard Delafield, Superintendent of the Military Academy at West Point, giving, at the request of the committee, his views and opinions upon the bill submitted to them.

Views and opinions of Colonel Richard Delafield, Superintendent of the Military Academy at West Point, on a bill proposed for the establishment of a branch military academy at the Hermitage; presented in conformity with the request of the Military Committee of the House of Representatives of the 14th of January, 1859.

On the general subject of military schools, the result of my reflections, and observation of those in Europe, is that the present organi-

zation of the one at West Point is pre-eminently advantageous for the wants and institutions of our country.

Its striking characteristic is the education of cadets for *all arms* in contradistinction to special schools for each arm. By our system the cavalry officer in the field, finding himself in command of artillery and infantry, by the chances of war may lose his artillery officers, when any graduate of this institution can at once command the battery. And so with any combinations. Each and every officer knows enough of the theory and practice of other arms to command or fill subordinate stations under any contingencies. Infantry, cavalry, or artillery graduates can each resort, in cases of necessity, to the engineer and ordnance officers' duties—throw up intrenchments, and prepare ammunition or fortify himself; while, at the same time, each or any of them knows the strength of such works as they may have to attack.

Our present institution is, I consider, not only good, but superior to anything that can be found in Europe at all suited to our wants and national feelings. Measureably perfect, is it the path of wisdom to change its character, with the possibility of injuring its usefulness, as well as that of the proposed appendage?

The authorities charged with a branch, as a preparatory or initiatory school, at the Hermitage cannot be expected to remain satisfied with the comparatively unimportant labors of sifting out the bad and worthless, as a preparation for this West Point institution. It throws upon the Hermitage school all the unpopularity and dissatisfaction of disappointed parents and friends of dismissed or rejected candidates for admission, without any fruits, as the result of their labors, to be proud of. The consequence would be, I cannot doubt, the enlargement and perfection of that institution to a perfect school for graduating officers for the small arm service, requiring less study and science than the other corps, leaving to the West Point academy the education of cadets for artillery and the staff corps, thus reducing it to a very small sphere of usefulness in numbers, and losing the inestimable advantage of all officers being available for any duty in cases of emergency; besides the inappreciable merit of the army being officered from every State of the Union by those whose friendships and nationality of feeling are as one and indivisible, while the opposite feelings, the consequence of a divided school system for the army, would engender strifes and animosities, destructive of harmony and efficient concert in action, and make the military service a source of evil in the land.

That the wants, necessities, and future welfare of our country call for additional military information I cannot hesitate to doubt. The result of all the information obtained under a late order of Secretary Davis on the art of war in Europe, in 1854, 1855, and 1856, taught me to believe there was not only an absolute necessity for diffusing this information in our country, but that we should, as a nation, lose no time in doing so. Yet I cannot think the primary school at the Hermitage, to winnow out the chaff for the preparation to the course of studies at West Point, can satisfactorily effect the object.

The institution at West Point, with its present four years' programme of studies, practice, and instruction, can accomplish *just as much, and prepare as many officers for the army* WITHOUT THE BRANCH SCHOOL AS WITH IT. So far as a military education is concerned, there is nothing to be gained by the proposed division of schools for scientific and mental training of pupils for the defence of the country.

What we most need is some means of following up the information gained in four years of study at West Point as youths; in its application to the profession as men, at West Point, the time suffices only to train the *mind*, using practical military exercises as an auxiliary, and for healthful change from what otherwise would break down the mental capacity. This practice, however, is but limited, and confined to such parts of *each arm* of service as can be most readily taught in the prescribed time. It is only by schools of practice that our officers can ever have the means secured to them as a body of improvement to the extent of their abilities.

Secretary Poinsett proposed summer camps of the army and militia. Secretary Davis proposed drawing the regiments from the field in winter and seasons of suspended operations to depots of instruction. Both these plans have failed to meet with encouragement.

In my report to Secretary Davis, before referred to, is pointed out the necessity for cavalry schools of practice, as indispensable for our mounted service, and that they must be established in the west either for *regiments*, or in some central locality as a school of practice for the *whole mounted service*. Sooner or later we will be forced into some such measure from the necessity of the case.

For such a purpose the Hermitage is far better adapted than for the proposed school, making it a branch to *perfect the student* instead of a branch to *prepare the candidate*. Situated near the Tennessee river, communicating by steam with the most extended limits of river navigation and railroad transport, in a highly fertile and productive country, with a climate peculiarly suited for outdoor exercises about ten months of the year, abounding with good horses, the Hermitage can probably be well adapted for a cavalry school of practice, for which the sabre, carbine, pistol, and lance are the requisite arms, and where there is probably ample space for manœuvres and use of cavalry weapons, but which for artillery is altogether too contracted, surrounded as it is with plantations and public roads.

Locating the schools of practice in the milder southern States, and those for study in the cooler regions of the highlands of the Hudson, will, I can but think, best subserve the united welfare of our country, Old Point Comfort, Virginia, as a school of practice for artillery, affords the longest uninterrupted ranges of sea-coast artillery, and suffices for the manœuvres of field batteries.

The Hermitage, in Tennessee, being appropriated for a cavalry school, and Harrodsburg, in Kentucky, (now belonging to the United States,) for an infantry school, throws the practice where it can be best performed, in the most economical districts of country, and in localities most accessible to the field of active operations.

The organization of such a school of practice at the Hermitage can

be effected by requiring every officer appointed to the mounted service from West Point or civil life to serve the first year at the school of practice, and before being promoted as a captain to serve a second year as first lieutenant; to require every company of the mounted service annually to send two men for instruction to the school, who, on returning, shall take to their respective companies two well trained cavalry horses; have every horse for the mounted service purchased and sent to the school, there to be trained one year before being sent to the regiment, and send every recruit for this service to the school, to be drilled for the same period in horsemanship, the use of cavalry arms, and tactics; and have one squadron permanently kept at the school to perpetuate and improve the system of discipline, drill, and instruction, and to assist in drilling the new horses and recruits.

Such an institution would add greatly to the efficiency and improvement of our cavalry service, and much more advantageous than a preparatory school for boys for the academy on the Hudson, besides furnishing material for excellent non-commissioned officers, upon which the efficiency of a company is greatly dependent. I now proceed to an examination of the several sections of the proposed bill.

Section 1. The inquiry should first be made, whether or not the property now held by the State of Tennessee, and offered to the United States, is suitable for a branch military academy to prepare cadets in a two years course of studies to enter the Military Academy at West Point. A sketch of this property was made for me in January, 1858, by Lieutenant A. J. Donelson, of the Corps of Engineers, who is familiar with every part of it. From this source I learn the whole tract of General Jackson's plantation exceeded 1,100 acres, of which 500 only, including the house, are offered to the United States for the contemplated purpose. Whether the north or south part of the tract is now the property of the State is not known; as, from the mansion north to the boundary would exceed more than half the plantation of 1,100 acres, the inference is that the southern *triangular* portion is the part proposed as a site for the military academy. Should this be the case, there is good ground for the belief that very extensive purchases of surrounding property must be made before the Hermitage can be suited for infantry and rifle exercises, and it is not certain that *artillery practice* can be conducted with safety by any arrangement. After locating the necessary buildings, it is not probable that a shot or shell can be fired with the range of such artillery as is used every year by the cadets at West Point. The property is surrounded by plantations and high roads, subjecting travellers, residents in the neighborhood, and laborers in the adjacent fields, together with stock, to injury from artillery practice, as well as the present long range rifled muskets. From the little information in my possession obtained from Lieutenant Donelson's sketch, and my own recollection of it from a single visit to the Hermitage, I can but think the inquiry and examination should first be made of the fitness of the grounds in connexion with the neighboring plantations and public roads; and also, whether a suitable supply of water can be commanded

for so large a population on a small surface, where heretofore springs have been the reliance for family and plantation use.

Section 2 calls for no comment.

Section 3. The library, I would recommend, should be in a building entirely separated from the academic recitation halls. The risk from fire in the latter building, occupied daily by many persons and in numerous apartments, is the constant source of apprehension and anxiety at this place during the winter; hence I would not advise that the library and academic building be under the same roof. In the tenth line of this section I would recommend saying "*detachments*" of troops, instead of "a detachment," as privates of different arms of service will be indispensable. The words "*for principal assistants*," in the 13th or 14th line, should be omitted. Great ill feeling and injustice is done the officers of the army to have junior lieutenants occupy single houses suitable, according to army usage, for field officers, when their superiors in rank have to take more indifferent quarters and single rooms. The first assistants are the choice of the professor, and in most cases are of the last who have been instructed by him; while officers filling other stations, as the adjutant and quartermaster, may be first lieutenants of many years previous appointment. And even *among the first assistants*, one who has been but two or three years in service may be the oldest in date of appointment among the assistants; thus giving him precedence over his superiors in rank and years. Until buildings are constructed to give sufficient quarters to the officers of all grades, there is no other just rule than the *army regulations on this subject*, which give satisfaction to most officers of the army. The insertion of the words *and other buildings as quarters for the officers of the army detailed for duty at the Hermitage academy* would more fully and justly accomplish the object. This subject of quarters is the source of much trouble at West Point, for which no satisfactory solution can be found until sufficient tenements can be provided for every family, to prevent two families, with their servants, being forced into the same building. In section 3 provision should also be made for a hospital, and quarters for a surgeon and assistant surgeon, for three clerks, a band-master, a storehouse for cadets' uniforms, text-books, stationery and other supplies; and for laundresses, (wives of enlisted men,) necessarily requiring apartments separate from the soldiers' barracks.

Section 4. The chaplain should be confined to the duties of the chaplaincy and instruction of moral philosophy and declamation. All other English studies, as grammar, history, geography, logic, and rhetoric, so far as they can be introduced in the programme of instruction, should be taught by some other person. It is asking too much of a clergyman possessing the superior talents that the station requires to give his time and attention to all these subjects, when, in practice, he can but supervise a part of the instruction in these several branches. An officer of the army should discharge these duties, assisted by as many lieutenants as may be necessary. The bill, then, should provide for the detail of an officer of the army as instructor of English studies, with the pay and emoluments of a captain of cavalry. It is not ad-

visible that this instructor should be a captain. First. Because that rank is indispensable with its company. Second. For the reason they have been too long from the academy to return to the elementary details of these subjects with the same advantage as more recent graduates, while to the latter some inducement may be offered. I would also recommend that a sword-master be stricken from this section, and provide for the detail of an officer of the army as *instructor of the use of small arms*, to wit: the small sword, sabre, straight cavalry sword, bayonet, lance, and musket. We can find few individuals other than officers of our army possessing a thorough and correct knowledge of the use of these weapons. To be dependent upon non-commissioned officers, discharged from European armies, to instruct our cadets is no longer expedient; besides which, the knowledge for instruction in *all arms* is not to be found in one individual. Among our officers at the present time we can fill the station advantageously.

In the details for officers of the army I would recommend a change in the phraseology, omitting the specification of the rank from which they shall be drawn, and particularly for commandant of cadets, the most difficult and important station to fill at the institution. I would propose the following: *And there shall be detailed from the army an instructor of tactics, with the local rank, pay, and emoluments of a major of cavalry, who shall be the commandant of cadets; and four assistant instructors of tactics, with the pay and emoluments of captain of cavalry.* I can venture to assure the committee that the best results will be attained by selecting the commandant from among the captains, as well as majors of the army, and the assistant tacticians from among the lieutenants, elevating them to the benefits and position of a higher grade. I may remark that it is not advantageous to take a captain of cavalry and make him professor of artillery, or the reverse; nor is it easy to find the qualifications for minute instruction of the theory and practice of the two branches combined in one individual.

After the word professors, in the 15th line, the words "*and instructors*" should be inserted, as they, in like manner, need assistants. I would omit the word professor as a prefix to the tacticians. Their duties will be confined to the art and practice, and not to the theory necessarily.

I have great doubts of the propriety of making the supervision of the two institutions a strife and contention for all officers of the army of any prescribed rank. I incline to the belief that *esprit de corps* will secure greater advantages, and that the superintendence had much better be made the special duty of *some one* corps or arm of service, avoiding as much as possible that exercise of influence by friends, who cannot, in the nature of things, be capable of judging of the necessary qualifications, and thus leave the Executive to detail an officer from the arm of service whose duty it has been to look forward to the discharge of these duties. As an officer of the Corps of Engineers, I do not propose it as the source any longer from which superintendents shall be taken for either institution. For more than half a century it has faithfully and zealously administered its affairs, and by its intelligence brought it to its present state of efficiency. Knowing that

for some years past there has been a desire to deprive the Corps of Engineers of the superintendence as a special branch of its duties, my opinion on this subject must not be considered altogether disinterested, being fully imbued with all the professional pride and *esprit de corps* of my brother officers of this arm of service, and a sincere belief it can do as well as it has been doing, and as well (I do not say better) as any other corps. While, then, as an engineer officer I am ready to acquiesce in having a part of the duties for which this corps was specially created transferred to others, (see act of Congress March 16, 1802,) I can but believe that the highest military scientific attainments should be looked for in the profession, to superintend the cultivation of its arts and science, and that confining the duty to *any one* arm of service is better than throwing it open to become a position of contest through outside influences.

There would appear to be an important omission in the bill, in not providing a general and common head for the two institutions. The programmes of studies and exercises, as well as regulations, must be constantly watched and preserved in harmony; all the reports, returns, and correspondence, for the information of the War Department, must go through one of the bureaus at Washington, from the two institutions. At present the chief engineer is the inspector of the Military Academy, exercising important command over it, and attends to all the duties at Washington. A similar functionary is indispensable to exercise control over the two institutions. The 8th section of the proposed bill might be considered as bringing the Hermitage academy under the rules and articles of war, and placing it under the Engineer Bureau, the chief of which would become the inspector; but the bill had better specify the department and common head.

Section 5. There would seem to be a much greater increase in the number of cadets by the provisions of this section than the other provisions contemplate. By this section there would be 191 appointments annually at the Hermitage, making at that institution 382 as a maximum; and if it sends annually a class equal to the appointments, the number at West Point will be 573 as a maximum, whereas at present there can be but 253. In any modification that may be proposed, I would recommend that the number heretofore assigned to the President's selection (10 annually) be continued, in order that the officers of the army and navy may have their sons provided for in like manner as other citizens. Should it be intended to provide for 191 appointments annually at the Hermitage, provision must be made in the bill for increasing the barracks, officers' quarters for additional instructors, and some few other buildings at West Point.

Although the army does not require such an increase, I am fully satisfied the welfare of the country calls for the diffusion of military information to this extent. But to effect it provision must be made for the number of graduates over and above the number required for the army. Section 6 calls for no comment except to change the word *staff* to read *academic board*, which is but a part of the *academic staff*.

Section 7. At the present time the course of studies at West Point occupies but four years, and not five as this fifth section refers to.

It should be altered to have the course of studies arranged for *two years* at the Hermitage succeeded and terminating with *three* at West Point.

Section 8. The provision in this section which gives to the *academic staff* (here understood to mean *all the commissioned officers* on duty at the academy as instructors of each and every branch) the power to recommend modifications of the regulations I consider a serious objection. For this institution the President is authorized by law to make the rules and regulations, under the organic act, constituting it a part of the army, and hence governed by the rules and articles of war. Here the authority had better rest. Under no circumstances would I advise that the regulations be devised by gentlemen (the professors) whose lives have been spent in scientific research of one specialty each. It cannot be possible to find a chaplain, a professor of mathematics, of drawing, of French, and of Spanish, who have such ideas of the wants and discipline of the military profession, as will enable them to regulate the code of discipline. The programme of *studies* can best be made by the professor for his own particular subject, but it cannot be judged of understandingly as a consequence by his colleagues. There is no such connexion between languages, mathematics, the art of design, algebra, and geometry. The division of time for the study of the several parts of the programme should be the function of the academic board, (not academic staff;) but the President's regulations can best arrange such details, and I recommend accordingly.

The discipline and drill of the 191 candidates, and the military organization and discipline of the whole body of 382 cadets at the Hermitage, as a battalion of infantry, presents a difficulty nowhere provided for. To effect it requires some legislation. At this institution cadets who have been three years under instruction are made captains and lieutenants, those of two years the sergeants, and those of one year the corporals. This arrangement enables the commandant and the assistant instructors of tactics, as field officers, to perform all the field duties of regimental infantry tactics; and in barracks, have the guard and police duties supervised and maintained. At the Hermitage none of the cadets could, as a general rule, be detailed as captains, lieutenants, or sergeants. It would be the blind leading the blind.

The only efficient plan that suggests itself is to make it the *duty by law* of officers of the army to serve at the military schools as assistant professors and instructors in the *theoretical* and *practical* departments, and that as many non-commissioned officers of infantry be enlisted for duty at the academy as may be necessary to instruct the cadets as a battalion of infantry.

At this institution no other officers than of the Corps of Engineers can legally be required to do professional or academic duty. It is so unwelcome a service that many officers of other arms decline to come here. With such a provision as the preceding, the President's regulations would enable the superintendent to assign any lieutenants to act as battalion officers, (in addition to their academic duties,) and with the

aid of the non-commissioned officers drill the cadets in the "school of the soldier," "squad," "company," and "battalion," as well as maintain the police and discipline of the corps.

RICH'D DELAFIELD,

Colonel of Engineers, Superintendent Military Academy.

Hon. CH. J. FAULKNER,

Chairman of Military Committee,

House of Representatives, Washington, D. C.

MILITARY ACADEMY, *West Point, January 22, 1859.*

H. Rep. Com. 153—2

MILITARY POSTS ON THE ROAD FROM MISSOURI TO
NEW MEXICO.

[To accompany Bill H. R. No. 132.]

FEBRUARY 3, 1859.—Laid upon the table, and ordered to be printed.

Mr. FAULKNER, from the Committee on Military Affairs, made the
following

REPORT.

The Committee on Military Affairs, to whom was referred a bill to establish certain military posts on or near to the road made by Lieutenant Colonel J. E. Johnston, leading from Missouri to New Mexico, have, according to order, had the same under consideration, and submit the following report:

The committee being of the opinion that there exists no such urgent necessity for the establishment of military posts at the points indicated in said bill as would justify the appropriation asked for, respectfully recommend that the bill do not pass.

They submit as part of their report the subjoined communication from the Secretary of War.

WAR DEPARTMENT,
Washington, May 15, 1858.

SIR: I have the honor to enclose herewith a report of the officer in charge of the Office of Explorations and Surveys, in answer to your communication of the 4th instant, enclosing a bill to establish certain military posts on or near the road made by Lieutenant Colonel J. E. Johnston, leading from Missouri to the Territory of New Mexico.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

HON. CHARLES J. FAULKNER,
*Acting Chairman of Committee on Military Affairs,
House of Representatives.*

The bill enclosed by you is herewith returned.

WAR DEPARTMENT,

Office Explorations and Surveys, Washington, May 7, 1858.

SIR: The letter of the Hon. Charles J. Faulkner, enclosing a bill proposing to establish certain military posts, having been referred to this office, the following statement is made in regard to the subject:

There are at present two great routes to New Mexico, terminating at or near Santa Fé: one starting from the west boundary of Missouri, near the junction of the Kansas with the Missouri river, which is the most important of all; and the other from Fort Smith, on the western boundary of the State of Arkansas, by the Canadian river, a branch road striking this last in or near the cross timbers. It is now proposed to open another route from the southwestern frontier of Missouri.

For this last purpose two routes were examined in the summer of 1857, under Colonel Johnston, in connexion with the establishment of the southern boundary of Kansas, and concerning these he has made a brief report. One of these routes continues on and near the southern Kansas boundary to the Cimmarron river, and would then follow the Cimmarron route to Santa Fé. The other would proceed directly from the southwest corner of Missouri to the bend of the Canadian river, in longitude 99° , and then follow the Canadian route to Santa Fé. For the latter of these Colonel Johnston indicated his decided preference, as being better and more direct.

The resolution introduced by Mr. Phelps, however, seems to indicate the inferior route as the one on which to establish the three posts. In this case the most suitable points would be, *first*, on the Arkansas river, at the crossing of the road where the country is fertile and well wooded and inviting to settlers; *second*, in the vicinity of the Salt Plains on the Red Fork; and *third*, on Rabbit Ear creek, at the junction of this route with the Cimmarron road.

The first point is in a country inhabited mostly by friendly Indians, and would not be much needed for defence, and the post might probably be located to better advantage on the Salt Fork, some fifty miles further west, which is about the western limit capable of settlement. The point near the Salt Plain would not be well supplied with wood, and the water in this region is generally bad; and though the post might be of some service in the event of the salt ever becoming of value to the country to the east, still the garrison stationed here would be doomed to almost unqualified wretchedness, and it may be even doubted if the health of the troops would permit them to remain. From this point west to the Cimmarron the country is very deficient in wholesome water and grass, and destitute of wood even for fuel. A post on the Cimmarron would be in a region to furnish protection to the travellers from the mouth of the Kansas as well as along the route proposed. Good water and grass exist here, but timber and fuel are somewhat scarce. If, therefore, posts are to be established on this route, it seems to me that one near the Arkansas, and one near the Cimmarron road, are all that should at present be attempted.

If the branch road to the Canadian be selected in preference to the one along the boundary, the following arrangement of posts would be

desirable: First, that the present Forts Arbuckle and Washita be abandoned, and one put in their stead at a point some forty miles to the west of old Fort Holmes. This is the western limit of cultivable land, and would probably be as efficient as the two posts now established. It would be some distance below the point of junction of the proposed branch road with the main route, but at that point there is not an equally desirable location for a military post.

A second post might well be established at Valley creek, in longitude 101° , which is a favorable locality, and in the country of the Kioways and Comanches. The third post should be at Tucumcari creek. These three posts along the Canadian are recommended by Lieutenant Simpson in his report, and are not only the most favorable localities, but most desirably placed. The last mentioned would be in a country very deficient in wood. The first would not be necessary, except as a better location for the troops now at Forts Washita and Arbuckle. No post in this connexion seems called for from Missouri to the Canadian river, as it passes in this portion through the Cherokee country, who are semi-civilized and friendly, and whose interests would probably be served by the opening of the road.

I would, in view of all facts and considerations, advise that, if an appropriation is desired, \$50,000 be asked to open the road from the Missouri line to the Canadian river, near the 99th meridian, and \$50,000 to establish a post on Valley, creek or such point for the protection of the route as a reconnaissance for that purpose should indicate.

A post on the Arkansas would undoubtedly do much to aid the settlement and development of that region, but it does not seem called for as a measure of defence to settlers, or of protection to travellers.

Very respectfully, your obedient servant,

G. K. WARREN,

1st Lieutenant Top. Engr's, in charge.

Hon. JOHN B. FLOYD, *Secretary of War.*

VOLUNTEERS IN NEW MEXICO.

FEBRUARY 3, 1859.—Laid upon the table, and ordered to be printed.

Mr. FAULKNER, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred a resolution of the House of Representatives instructing them to inquire into the expediency of authorizing the President of the United States to call into service one regiment of volunteers for the suppression of Indian hostilities in the Territory of New Mexico, have, according to order, had the same under consideration, and report :

That they have conferred with the Secretary of War as to the necessity of this increase to the military forces of the country, and having learned from him that the latest advices from New Mexico induce the belief that the disturbances in that country are nearly quelled, and, further, that it is the intention of that department to keep a strong military force in that Territory for the purpose of subduing the Indians and keeping them in check for the future, the committee are of opinion that it would not be expedient at this time to authorize the President to call into service a regiment of volunteers in New Mexico. They therefore ask to be discharged from the further consideration of the said resolution, and that the same be laid upon the table.

They append to this report, and as part of it, the following letter from the Secretary of War :

WAR DEPARTMENT, *January 8, 1859.*

SIR: I have the honor to acknowledge the receipt of your letter of the 5th instant, with the enclosed resolution of the House of Representatives respecting the expediency of calling out a regiment of volunteers for the suppression of Indian hostilities in New Mexico.

In reply, I have to say that the last advices from New Mexico induce the belief that the disturbances in that country are very nearly quelled; and whether that intelligence be correct or not, it is the intention of this department to keep a strong military force in that Territory for

the purpose of subduing the Indians and keeping them in check for the future. Under these circumstances the committee can best judge whether there is any necessity for an additional military force in that quarter.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

Hon. CHARLES J. FAULKNER,
*Chairman Committee on Military Affairs,
House of Representatives.*

The resolution of the House of Representatives is herewith returned, as requested.

NEBRASKA CONTESTED ELECTION.

FEBRUARY 4, 1859.—Ordered that the further consideration of the report be postponed until Wednesday next, and that the report be printed.

Mr. WILSON, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom was referred the memorial of Bird B. Chapman, contesting the seat of Fenner Ferguson, the sitting delegate from the Territory of Nebraska, have had the same under consideration, and make the following report:

That the whole number of votes which were counted by the territorial canvassers for the said contestant and for the said sitting delegate was 3,251, of which number the contestant had 1,597, and the sitting delegate 1,654, giving to the sitting delegate a majority of 57.

It appears, however, by the statements and admissions of the parties, and the evidence taken in the case, that the votes cast in a number of the precincts in said Territory were not counted by the election officers, and did not in any way contribute to the result above stated.

For instance, five votes returned as having been cast for "Judge Ferguson," instead of "Fenner Ferguson," and rejected for that reason by the board of canvassers, the committee have considered as belonging to the sitting delegate, and have added the same to his vote, making his total vote 1,659.

Again, the contestant proved that votes cast for him at the Bellevue precinct were rejected by the board of election because the ballots read "Bird B. Chapman for Congress," instead of "for Congress, Bird B. Chapman."—(See Wm. R. Watson's deposition, Ho. Mis. Doc. 5, page 17, 1st sess. present Congress.)

Contestant also proves that ten votes cast for him at the Cuming City precinct were not counted for him by the territorial canvassers, inasmuch as the judges of the election did not return the poll books of said precinct to the county clerk within three days after the election, as required by law, by reason of which the county clerk failed to certify the same in his abstract to the governor.—(See certificate of said county clerk, Ho. Mis. Doc. 28, page 34, present sess.)

The votes so excluded had been legally cast. No question has been or is now raised as to the voters being actual residents of the precinct

and entitled to vote. The committee, therefore, have, in accordance with the precedents established in Richards' case, Bard's case, Spaulding *vs.* Mead, also Mallory *vs.* Merrill, Contested Election Cases, pages 95, 116, 117, 159, and 229, added to the vote of contestant, making his vote 1,608.

This total vote given to contestant the sitting delegate has failed to invalidate or question by any evidence before the committee. In fact, the sitting delegate admits the regularity of this vote. On the other hand, it is shown by contestant (see depositions of John Reck, Samuel B. Nichols, and poll list, House Mis. Doc. 5, pages 10, 11, 24, 25 and 31) that at the Cleveland precinct, which is situated 83 miles in the interior of the Territory, and where there are only five dwellings and they of a temporary character, there were *only six persons residing* in said precinct who voted at said election, and yet thirty-five were returned as having voted for the sitting delegate, and *one* for the contestant.

It is true that the sitting delegate has offered evidence to prove that a larger number of voters resided at said precinct; but your committee are of the opinion that said evidence should be taken with great allowance, as the witnesses are principally those who are charged by the contestant with voting or acting illegally at said precinct, which charges, in the opinion of the committee, seem to be established.

It is further shown (see House Mis. Doc. 28, page 33,) that the officers of the election at said precinct were not sworn by any duly qualified officer of the Territory, or any person having authority to administer an oath in said cases, which, by the precedent established in contested election cases of McFarland *vs.* Culpepper, McFarland *vs.* Purviance, and Scott *vs.* Easton, pages 131, 221, 273, vitiates the election. Yet the committee, wishing to deprive no citizen of his vote, if actually and fairly cast, have in this only rejected the clearly illegal votes, to wit, twenty-five.

At the Monroe precinct, ninety-three miles in the interior of the Territory, 87 votes were returned as having been cast, 82 of which for the sitting delegate, and *one* for the contestant. The committee are of opinion, as is clearly shown by the testimony of John Reck, Samuel B. Nichols, and the poll list of said precinct, (see House Mis. Doc. 5, pages, 11, 12, 24, 25, 32, and 33,) that the most *flagrant* illegalities and frauds were perpetrated in said precinct, in receiving the votes of persons known to be foreigners, and others not inhabitants of the precinct entitled to vote, and in putting on the poll list as having voted the names of fictitious persons such as "*Oliver Twist*" and "*Samuel Weller*;" and the committee are further of the opinion that not only are said names fictitious, but also that *they could not have been placed upon the poll list except by a corrupt collusion of the judges and clerks of said election*; and permitting this, of which there can be no doubt, we feel great doubt in giving credit to any part of the entire poll; that of the forty-five persons who *may* have actually voted at said precinct it appears that over forty of them were Mormons, and two-thirds of them were foreigners; that at the place of holding the election there were *only two dwellings* inhabited, and they were temporary sod or log shanties; that the election officers at the precinct

did not take the oath required by the laws of Nebraska, neither were they sworn by any officer having authority to administer oaths in said cases.

The committee have rejected from this poll forty-two, as clearly illegal, fraudulent, or fictitious.

At the Florence Precinct 401 votes were returned as having been cast, of which 364 were for the sitting delegate and 4 for the contestant. The committee find by reference to the return made to the governor by the county board of canvassers who canvassed the vote, (see House Miscellaneous Document No. 5, pages 67 and 68,) that because the polls in this precinct having been kept open until after the hour of six o'clock p. m., the laws of Nebraska providing that the polls shall be opened at nine and be kept open until six o'clock p. m., and because votes were cast between the hours of eight and nine in the evening, it was *unanimously* recommended by the said county canvassers that this whole poll should be rejected. This they present as a part of the true history of the case and the opinion of those interested in conducting the election.

However, it is shown by the testimony of Edward Creighton, (House Miscellaneous Document No. 5, p. 23,) that after the hour of five p. m. the judges of said election announced that there were only 271 votes then polled, and by the testimony of Timothy Donovan, page 19 of Document 5, that between the hours of eight and nine in the evening the judges of the election announced that 373 votes only were then polled; and by same witness, that during the same evening he saw one person vote *four or five times*. Also, by same witness and the testimony of Oscar B. Selden, (see pages 13, 14, 15, and 16 of Document 5,) that a large proportion of the residents of Florence precinct were Mormons, and that a large proportion of the names found on the Florence poll list he, though an old resident, did not know. It further appears, by a comparison of said poll list with the one returned from said precinct for the election held one year afterwards, (for said poll lists see Document 5, page 37, and Document 28, page 28,) that there was a falling off of the vote in that precinct of nearly *two-thirds*, and that *only seventy-eight names of the four hundred and one* returned as having voted at the election for delegate are found on the list of the subsequent year's election. It is further shown that the officers of the said election precinct were not sworn before any officer qualified by the laws of Nebraska to administer oaths in such cases.

These numerous evidences of illegalities and frauds practiced at this precinct, in the opinion of the committee, justify the rejection of the whole poll. If, however, it should be considered that the facts above set forth are not sufficient to set aside the entire poll, still the preponderance of the evidence shows that the number of votes cast at said precinct after the hour of six o'clock p. m., for the sitting delegate, and the many other fraudulent and spurious votes there and at other precincts recorded for him, clearly entitle the contestant to the seat. The committee deduct the four votes cast for the contestant at the Florence precinct. They also deduct from the vote counted

for the sitting delegate at said precinct, to wit, 364, which, with the twenty-five rejected from the Cleveland poll, and forty-two from the Monroe poll, gives to the contestant a majority of 376.

The committee therefore recommend the adoption of the following resolution:

Resolved, That Bird B. Chapman is the legally elected delegate to the thirty-fifth Congress from the Territory of Nebraska, and is entitled to his seat as such delegate.

JOS. WILSON.

JOHN A. GILMER.

EZRA CLARK, Jr.

JAMES M. CAVANAUGH.

Without adopting all the arguments of the committee, I agree in the conclusion to which they have arrived.

L. Q. C. LAMAR.

J. W. STEVENSON.

NEBRASKA CONTESTED ELECTION.

FEBRUARY 4, 1859.—Ordered that the further consideration of the report be postponed until Wednesday next, and that the report be printed.

Mr. BOYCE, from the Committee of Elections, submitted the following

VIEWS OF THE MINORITY.

The undersigned, a minority of the Committee of Elections, respectfully submit the following report:

The facts of the case sufficiently appear from the report of the majority of the committee. We think it only necessary therefore to allude to the points of difference between the majority and minority of the committee. Those points of difference are in reference to the Cleveland, the Monroe, and the Florence precincts. In order to a correct understanding of these points of difference a brief analysis of the evidence is proper.

In reference to the Cleveland precinct, the contestant introduced the following evidence:

Cleveland precinct.

John Reck knows every resident of Cleveland precinct; six of those on the poll list were then residents of the precinct; most of those on the poll list resided at Florence, in another county.

O. B. Selden said eight of the voters at Cleveland precinct lived at Florence.—(Page 16.)

Samuel B. Nichols said: "I first visited the Cleveland precinct; I inquired of every person I could see, of whom I thought I could get any information, as to the voters in said precinct at that election; I went to the clerks and one of the judges of election and asked permission to take a copy of the poll list; I failed to obtain one; I made the same inquiries of them as of others relative to the number of voters; those of whom I inquired made contradictory statements as to the number; the highest number which any one as living in the Cleveland settlement on the day of election was sixteen; they claimed that there were a number living on Shell creek, in the precinct; all that I could find from any reliable information as residents in the whole precinct, either on the day of election or when I was there, were *ten*; I found living at the Cleveland settlement only four men who claimed to have voted at said election; there were only

seven men living in the whole precinct, and only six of them claimed to have voted; this number included all who lived on Shell creek; I went to Shell creek and found all the houses and made inquiries of all the persons I could find as to the number of persons then living on Shell creek, in Monroe county, or who lived there at the time of the election; the number of adult males then living there was three, and the number living there at the time of the election was *four*, as stated by all persons of whom I inquired."

Ferguson's testimony.

Kenedy says he voted at Cleveland, "my place of business, and I considered it my residence. My family temporarily in Florence. The hotel company had eighteen hands at work; with one or two exceptions they were young men who made their homes wherever they were at work; one of the married men had made a claim before moving out. They all, I thought, had a right to vote, being long enough in the county. Acquainted with a majority of voters; thinks there were from thirty-five to forty legal voters at Cleveland precinct; full vote not cast."

J. M. Mentzer. He said: Went to Monroe county; settled in a tent near Cleveland; made a claim in July. Believes none but legal votes polled; is an editor.

A. B. Pattison was probate judge in Platte county; surveyed the town of Cleveland; thirty-five inhabitants in Cleveland precinct in August, 1857. There were twenty or twenty-five votes that I know of.

G. W. Stevens resided in Cleveland at the election in 1857. Knows of no illegal voting. Well acquainted with the inhabitants of Cleveland precinct; there were from thirty-five to forty voters in the precinct; the full vote was not polled at that election. H. H. Hill only voted once.

R. W. Steel. A company went out to Cleveland, some to work, and some to settle, about the 1st of July; among these persons who went out at this time, and talked of settling there, were the eight persons objected to by Mr. Selden as not being residents. Kenedy, Weech, Mentzer, and others went to Cleveland to settle permanently.

In reference to Monroe precinct the evidence for contestant is as follows:

John Reck. Of the names on the poll list about seven persons resided in Monroe settlement.

Oliver Twist and Sam. Weller voted. One-third Mormon Americans.

Samuel Nichols visited the precinct after the election. Says: "I then went to Monroe precinct, about ten miles distant from Cleveland settlement, and stopped at the Monroe settlement. When the election was held for that precinct I asked and obtained permission of one of the judges of election, and of one of the clerks, to take a copy of the poll list of said election. I found only five of the persons whose names are on the poll list living in Monroe settlement. There were only two dwellings inhabited then; one was a sod shanty or

house, the other a small log, temporary, shanty. From there I went to the Mormon settlement called Beaver, or Genoa, on Beaver creek, in Monroe settlement. I found there the leaders or principal men of the Mormon settlement or colony, viz: Messrs. Allen, Henry Peck, Nathan Davis, and Charles Cooper, who was one of the judges of election on the 3d day of August. I read over to them the names on the poll list, and asked them to tell me each man whom they knew as I read over the names. I counted the number whom they stated that they knew, and the number was *forty-five*, which all or any of them knew. I asked them if they knew every one who lived in their settlement; they said they did. I then read over the names on the poll list again, and asked them to name each man as I read over the names who lived in their settlement; they named *forty*. I counted them. I asked if they knew how many men living in their settlement voted at the last election. They said they did; that there were just *forty*. I asked for whom they generally voted. They said they all voted for Judge Ferguson.

Kenedy was acquainted with the Mormon settlement; thinks there were 120 voters; no Mormon trains about time of election; his opportunity of knowing is as good as Mr. Reck's; full vote not polled.

G. W. Stevens considerably acquainted in the Mormon precinct, thinks 100 or more voters.

H. T. Hudson, elder in the church of the Latter Day Saints, well acquainted in Monroe precinct; about 100 voters; told Chapman the election was not fair; thought so until he got better information. There was an eccentric individual generally known by the name of Samuel Weller, and I should not wonder if he voted under that name.

Charles H. Whaley, probate judge of Monroe, was pretty well acquainted; thinks there are about 100 voters in Monroe and Genoa; thinks the election fair; did not know of one illegal vote; voted for Chapman; challenged some of the voters.

W. F. Pierce, manager of election; pretty well acquainted; thinks there was no illegal voting.

R. P. Kimbal, clerk of election; pretty well acquainted; thinks the election perfectly fair; thinks there were more than 87 legal voters in the precinct then; the contest for county seat made each side vigilant in challenging votes.

Florence precinct.—Contestant's evidence.

T. Donovan said: "Mormon Tom voted four or five times;" heard one of the judges of election, between eight and nine o'clock p. m., say that 373 votes were polled.

E. Creighton was told by one of the judges of election, "about five o'clock, or after," that 271 votes were polled.

The poll at Florence, at election in August, 1858, was 159.

Ferguson's evidence.

R. W. Steele, one of the managers of election, says not over "fifteen votes were polled after 6 o'clock." The negro sworn to by

Donovant as voting, offered to vote but was rejected; does not believe Mormon Tom voted more than once; there was no Mormon train near at the time of election, and none such voted; knew all who voted, except those from Saratoga; there were about thirty of them; most of them voted for Thayer; some perhaps for Chapman; does not think any of them voted for Chapman; should not believe Donovan on oath; believes he swore falsely in a pre-emption claim; had that reputation.

Florence.

Dr. Malcomb. No Mormon train; all left before; no persons of such train voted.

The vote polled at Florence in the election August 2, 1858, was 159.

Dr. Harsh, manager of elections at Florence. Polls closed about 7; we waited for some voters to come in from prairie; "they were legal voters—about 15."

To oust the sitting member, it is necessary to throw out the Florence precinct. We have not felt at liberty to do this for obvious reasons. We have deducted the 15 votes polled after 6 o'clock. The result at which we arrive is, that the sitting member is elected by 34 majority. We reach this by the following process:

For Ferguson, as returned by canvassers	1,654	
Add votes not counted	5	
	1,659	
Deduct votes at Florence after 6	15	
Deduct Weller and Twist	2	
		17
		1,642
Chapman, as returned by canvassers	1,597	
Add vote not counted	1	
Cumming City vote not counted	10	
		1,608
Majority for Ferguson		34
		==

We therefore recommend the adoption of the following resolution, viz:

Resolved, That Fenner Ferguson is the legally elected delegate from the Territory of Nebraska.

W. W. BOYCE,
I. WASHBURN, JR.

J. C. P. DE KRAFT.

FEBRUARY 5, 1859.—Laid on the table and ordered to be printed.

Mr. WINSLOW, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of J. C. P. De Kraft, a lieutenant in the navy, having had the same under consideration, report:

The petitioner, in the month of March, 1856, was ordered by the Secretary of the Navy to proceed from New York, via Panama, to San Francisco, for the purpose of joining the United States ship John Adams. In obedience to his order he reported to the senior commanding officer at San Francisco for that duty. Previous to his starting he applied to the Navy Department for advance of mileage, at the rate of ten cents per mile, from New York, via Panama, to California, which he admits would have exceeded his actual travelling expenses. This request was not complied with, but the navy agent at New York was instructed to advance him the usual sum sufficient for his actual expenses. Upon his return, to wit, on the 21st October, 1858, he again applied to the present Secretary of the Navy for mileage in lieu of the allowance made him, and he bases his application upon a construction of the act of 1835, fixing and regulating the pay of the officers of the navy, and declaring that they shall receive no other compensation, "except travelling expenses when under orders, for which ten cents per mile shall be allowed," and he says that members of Congress from California, and officers of the army, have their mileage regulated by the same authority. To this second application the Secretary replied, that similar cases have been brought to the attention of the department but it has not changed the allowance, and the request was refused. The act of 1835 applies solely to the navy, and has no reference to the army or to members of Congress.

It has been the uniform practice of the department, and its settled construction of the act of 1835, that the allowance of ten cents per mile for travelling, is to be applied to cases of travel, under orders, within the United States. But whenever the necessity exists for passing out of the country, the invariable rule is to reimburse the actual necessary outlay.

This construction of the act of 1835, although, perhaps, not warranted strictly by the letter of the act, is now regarded, says the late

Attorney General Clifford, as *res judicata*, (30th Sept. 1847;) and it is said to be a sound rule that whenever an act of Congress has, by actual decision, or by constant usage and practice, received a construction at the proper department, and that construction has been acted on for a succession of years, it must be a strong and palpable case of error and injustice to justify a change in the interpretation thereof.

The committee are not aware that the rule of the department has ever been departed from, and they believe it just and proper both for the government and the officers concerned; and, as the mileage as claimed by the petitioner exceeded, by his admission, his actual expenses, there is no such case of injustice as would warrant a departure from a fixed rule. The committee, therefore, have no hesitation in recommending that the prayer of the petitioner be disallowed.

SAMUEL B. ELLIOTT.

FEBRUARY 5, 1859.—Laid on the table and ordered to be printed.

Mr. WINSLOW, from the Committee on Naval Affairs, made the following

R E P O R T .

The Committee on Naval Affairs, to whom was referred the memorial of Samuel B. Elliott, late a passed midshipman in the United States navy, having had the same under consideration, respectfully report:

The petitioner was a midshipman in the United States navy, attached to the United States schooner Flirt, in 1843. Under the exigencies of the service he was, by his commanding officer, directed to perform at various times the duty of purser, for which he asks compensation, at the rate of \$1,500 per annum, amounting to \$789 03, deducting therefrom \$222 46, his pay as midshipman. The act of 1835, regulating the compensation of naval officers, expressly declares that they shall receive no other compensation whatever, except for travelling expenses. It has not been the practice of the government to allow for extra services of this character when temporarily performed by a commissioned officer of the navy, and the committee recommend that the prayer of the memorial be disallowed.

THE SECRETARY OF THE NAVY,
WASHINGTON, D. C.
JANUARY 1, 1901.
SIR:
I have the honor to acknowledge the receipt of your letter of the 29th ultimo, in relation to the matter of the payment of the bounty on the discharge of the crew of the U. S. S. Albatross, and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

REPORT.

The following is a report of the results of the investigation conducted by the Bureau of Naval Affairs, in relation to the matter of the payment of the bounty on the discharge of the crew of the U. S. S. Albatross, and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

It is respectfully requested that you will be good enough to advise the Bureau of the results of the investigation conducted by the Bureau of Naval Affairs, in relation to the matter of the payment of the bounty on the discharge of the crew of the U. S. S. Albatross, and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

SAMUEL A. COALE.

[To accompany Bill H. R. No. 858.]

FEBRUARY 5, 1859.

Mr. WINSLOW, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Samuel A. Coale, jr., having had the same under consideration, report:

The United States ship *Levant*, attached to the China squadron, was left without a purser while on that station, in consequence of the sickness of Purser B. J. Cahoon, who was invalided and ordered home. The commander-in-chief of that squadron gave a temporary appointment to the petitioner, which was confirmed by the Navy Department, and he entered upon the duties on the 3d of January, 1857, and faithfully performed them until 10th January, 1858, when he was relieved by a regularly commissioned purser, and returned home to settle his accounts. He claims the pay and rations of a purser of a sloop-of-war during that period, and the usual allowance for travelling expenses home, amounting to \$2,737 50, and the committee think him justly entitled thereto. It has been the invariable practice of the government to make remuneration in like cases, and they report a bill accordingly, and recommend its passage.

SAMUEL C. REID.

[To accompany joint resolution No. 40.]

FEBRUARY 5, 1859.

Mr. WINSLOW, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the joint resolution proposing the thanks of Congress to Samuel C. Reid, late commander of the private armed brig "General Armstrong," for having designed and formed the present flag of the United States, having had the same under consideration, respectfully report :

The preamble of the resolution assumes that "satisfactory evidence has been adduced that Captain Samuel C. Reid, whose deeds shed such chivalrous glory upon our country in the gallant defence of the private armed brig General Armstrong against a British fleet at the island of Fayal in September, 1814, did make and design the present flag of the United States, as adopted by an act of Congress approved April 4, 1818."

The committee deemed it due to the House, and the gallant individual who is the subject of the resolution, to investigate and spread upon the records the entire history of the flag, from its original adoption until the passage of the last act by which it was *established*.

During the struggle of the revolution, both before and for some time after the declaration of independence, various flags were used, according to the particular colony whose troops took the field, and the particular arm of service. The flag commonly called the great union was first displayed by General Washington upon the heights before Boston, upon assuming command of the combined army of the colonies, on the 2d of January, 1776. It displayed the union of the crosses of St. George and St. Andrew, with thirteen stripes, alternate red and white through the field, and was probably used until the 3d of September, 1777, when a resolution of the Congress, adopted 14th June, 1777, was first promulged. By that resolution it was declared that "the flag of the thirteen United Colonies be thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field, representing a new constellation." It was this flag that was used at Burgoyne's surrender at Saratoga, the 17th of October, 1777.

On the 13th of January, 1794, on the occasion of the admission of Vermont and Kentucky into the Union, on the motion of Senator Bradley, of Vermont, it was enacted "that from and after the first of

May, anno Domini, one thousand seven hundred and ninety-four, the flag of the United States be fifteen stripes, alternate red and white; that the union be fifteen stars, white in a blue field."

This was the flag which waved over the victorious field of Orleans, and whose glories were illustrated by the brilliant exploits of our seamen on the ocean.

In 1818, on the suggestion of Mr. Wendover, a member from New York, the flag was again *established*. The addition of new States, it was thought, rendered some change necessary. The policy, as indicated by the act of 1794, seemed to be that of adding both a star and a stripe for each accession to the confederacy. As the States had increased to twenty in number, it was obvious that the flag would become unwieldly if that policy was to be carried out, especially so when the expectations of the future increase of the country should be realized. Many projects were proposed. On the one hand it was suggested to return to the act of 1777; others suggested an arbitrary number both of stars in the union and stripes on the field; but finally, by a happy suggestion, the present flag was *established*, to wit: On the field thirteen stripes, alternate red and white, and in the union twenty stars, white in a blue field; and it was provided that on the admission of a new State one star should be added to the union of the flag; and that such addition take effect on the 4th day of July next succeeding such admission.

It is in this connexion that the preamble of the resolution avers the service of Captain Reid, and the resolution provides for the presentation of the thanks of Congress to him. It will be seen that in the states of the flag there was no essential alteration. The original colors were maintained, and the number of stars pertinently adapted to the number of the States of the confederacy.

In the debates in Congress, and in the remarks of Mr. Wendover, no allusion whatever is made to Captain Reid, nor are any suggestions of his adverted to. But it clearly appears from the original correspondence between Mr. Wendover and Captain Reid, which correspondence, measurably confined to the subject, extended to some length that if the suggestion was not originally that of Captain Reid, although such was probably the case, yet he was intimately connected with the movement, and much contributed to settle the matter; and that he procured to be made in his own family, without compensation, the first flag which was displayed, after the passage of the act, from the dome of the Capitol. If, however, from the correspondence and the debates in Congress, any doubt should remain as to the individual from whom the idea originally proceeded, that doubt is removed by the affidavit of Captain Reid, who declares that the matter was first moved by him, and that his suggestion was adopted and acted upon by Mr. Wendover.

It is a happy omen that the flag should have been re-established, or, at least, that such suggestions should have received the warm action and loyal support of a gallant veteran who so ably defended its folds and so well illustrated its glories on the decks of the "General Armstrong" at Fayal—a combat whose fame is of world-wide celebrity—and it is due to him that these facts should be made known.

SARAH BRASHEAR.

[To accompany Bill H. R. No. 859.]

FEBRUARY 5, 1859.

Mr. HAWKINS, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Sarah Brashear, submit thereon the following report:

The petitioner is the mother of William C. Brashear, deceased, a captain in the navy of Texas at the time of the annexation of that republic to the United States. Between the date of the annexation and the passage of the act of Congress of the 3d day of March, 1857, for the compensation of the officers of the said Texan navy, the said Captain Brashear died, so that neither he nor his legal representatives have ever received the benefits which the said act would entitle them to if living; therefore his mother, the petitioner, comes and asks that the pay which her son would have received, had he been living at the time of the passage of the aforesaid act, may now be appropriated and paid to her. Your committee, recognizing fully the justice of the petition, report favorably thereon, and recommend that the accompanying bill do pass.

THE HISTORY OF THE
REIGN OF
HAROLD GODWINSON
BY
JOHN GAGNEPAIN

THE HISTORY OF THE
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SUSAN C. RHEA, WIDOW OF DR. J. BURROWS GARDINER.

[To accompany Bill H. R. No. 860.]

FEBRUARY 5, 1859.

Mr. HAWKINS, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of John S. Rhea, have had the same under consideration, and report:

Dr. J. B. Gardiner was a surgeon in the navy of Texas at the date of the annexation of that republic to the United States. On the 3d of March, 1857, an act was passed for the benefit of the officers of the said navy of Texas. Before the passage of this act Dr. Gardiner died, so that neither he nor any one for him has ever received the benefits of the act. He left a widow, who has since intermarried with the petitioner, John S. Rhea, who asks that the compensation to which the aforesaid Gardiner would be entitled, if living, be paid to his wife, Susan C. Rhea. In accordance with the prayer of the petition, your committee report a bill, and recommend its passage.

WILLIAM C. HARRIS, WIDOW OF DR. J. BURNBROWN GARDNER.
(The accompanying bill is No. 1001)

WILLIAM C. HARRIS.

Mr. HARRIS, from the Committee on Naval Affairs, reads the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of William C. Harris, widow of Dr. J. Burnbrown Gardner, and report.

Dr. J. B. Gardner was a surgeon in the navy of Texas at the date of the annexation of that republic to the United States. On the 24th of March, 1837, an act was passed for the benefit of the officers of the said navy of Texas. Under the passage of this act Dr. Gardner died, so that neither he nor any one for him has ever received the benefits of the act. He left a widow, who has since been intermarried with the gentleman, John S. Harris, who asks that the compensation to which the said Gardner would be entitled, if living, be paid to his widow, Susan C. Harris. In accordance with the prayer of the petition, your committee report a bill, and recommend its passage.

JOSEPH H. CAUSTEN, LEGAL REPRESENTATIVE OF.

[To accompany bill H. R. No. 861.]

FEBRUARY 5, 1859.

Mr. TIMOTHY DAVIS, of Massachusetts, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of James H. Causten, of the city of Washington, sole heir and legal representative of Joseph H. Causten, deceased, late purser in the navy of the United States, have had the same under consideration, and respectfully report:

That said Joseph H. Causten was for many years a purser in the navy, and while on board the "Enterprise," in that capacity, was afflicted with brain fever, in the West Indies, from which he never recovered; he died June 29, 1822. Being unable, while returning to New York, to perform his duties, a substitute was appointed, who, from ignorance and carelessness, permitted his books and vouchers to become irregular and confused; and, finally, a new purser was appointed, without any account being taken of stores and other articles left on board or placed in the public store.

While sick at New York, where he was promptly removed from the vessel, he was wholly incapable of making out his official accounts, or attending to business of any kind, as well from his violent and protracted illness as from the confused state in which his said substitute had placed his affairs. The Navy Department sent to New York a special officer of the department to take possession of his books and papers and bring them to Washington, which he did—from what source or how far he obtained them, the memorialist is unapprised—his books and extraneous papers so taken, though often applied for, have not been produced.

The memorialist (brother of the purser) was surety on the bond of the purser, and, as such, entitled to notice of the contemplated act of the department, but never received any, nor information that an officer had been sent to New York for the books and papers; knew nothing of it until nearly five years after, and then led to inquiry in consequence of a writ at the suit of the United States on the purser's bond for \$1,521 89, an alleged balance due to the United States from

said purser, as found by the Fourth Auditor's statement, made up from loose and imperfect papers so improperly collected and withdrawn from New York—the suit was instituted at Baltimore, where the memorialist was then domiciled. After said writ was served, the memorialist sought, among a mass of papers left by the purser, and found sundry vouchers for expenditures by him on public account, which he then (after the lapse of nearly five years from the purser's death) submitted to the Fourth Auditor, who admitted a portion of them sufficient in amount not only to cover said alleged indebtedness of \$1,521 89, but also an excess of \$891, which was paid to him; but others of said vouchers were not allowed by said Auditor, being those reported herewith as Nos. 1 to 37, and Nos. 6 and 19 of No. 38, which constitute the present claim of the memorialist, which he prays may be allowed, and they are certified by the Fourth Auditor never to have been allowed in any settlement of account.

The committee have carefully examined said vouchers, amounting in the aggregate to \$6,895 69, and have reduced them by striking out all items that did not clearly appear as for the legitimate public use, amounting to \$689 69, and this sum deducted leaves due to said purser's account the net sum of \$6,206; and for that amount the committee report a bill for the relief of the memorialist.

The peculiar circumstances of this case forbid that exact justice between the government and the purser can be now arrived at; but, inasmuch as the government, by its novel *ex parte* and improper proceedings, has caused whatever loss or injury that has resulted, so it should now extend liberal justice in the final settlement of this account. A portion of the stores and slops which the adduced vouchers specify, were certainly consumed by the crew, and most probably not charged against them after nearly five years delay of settlement, and other portion of the stores and slops must have remained on board the vessel or been turned into the public store, for which no allowance has been or can now be specifically made; and, on the other hand, the purser has lost his profit on the stores and slops used by the crew, and also on the portions left on board the vessel or placed in the public store, and also his perquisites of all kinds, his travelling, medical, and funeral expenses, &c.

It is, therefore, considered that as substantial justice as can now be arrived at will be done by the appropriation of the amount set forth in the bill.

ANN SCOTT, WIDOW OF WILLIAM B. SCOTT.

[To accompany Bill H. R. No. 862.]

FEBRUARY 5, 1859.

Mr. TIMOTHY DAVIS, of Massachusetts, from the Committee on Naval Affairs, made the following

R E P O R T .

The Committee on Naval Affairs to whom was referred the memorial of Ann Scott, have had the same under consideration and report :

That having fully investigated the facts of the case, as set forth in the memorial of the petitioner, they fully coincide with the report of the Naval Committee of the Senate, dated January 26, 1859, and adopt it as their own ; and they submit the accompanying bill, with the recommendation that it pass.

The Committee on Naval Affairs to whom was referred the memorial of Ann Scott, have had the same under consideration and report :

The memorialist alleges that she is the widow of the late William B. Scott, who was appointed navy agent at Washington city in the year 1834, and for the faithful performance of the duties of which office he gave the bonds required ; that in the year 1839, in addition to his duties as navy agent he was charged with the payment of navy pensions, and in consequence was required to increase the penalty of his bond under separate sureties as navy pension agent as well as to employ extra force in his office, for which no provision was made at the time of his appointment, and that he continued so to disburse the amounts due to said pensioners until June 5, 1849, when he ceased to be navy agent.

Your memorialist further alleges that judgment was obtained against her said husband by the United States, for the sum of \$6,000, or thereabouts, being money retained by him on account of services rendered in the disbursement of pensions ; and that he, notwithstanding the uniform practice of allowing to other pension agents (an office entirely distinct from that of navy agent) a percentage on the disbursements made by them, was debarred an offset to said judgment in his claim for commissions for similar labor and responsibility ; and

further, that in order to satisfy said judgment it was necessary to sacrifice property to which she was entitled in her own right.

The memorialist, therefore, prays that the accounts of her said husband may be adjusted and settled, after allowing therein such commission as has been allowed to his successor, who went into the office of navy agent with the duty of pension agent attached thereto at the time of his appointment, and at his acceptance of said office, which, as heretofore shown, was not the case at the time of the appointment of her husband.

From facts before your committee it appears that the said William B. Scott, besides performing the full duty of navy agent, as defined at the time of his appointment, and other onerous duties devolved upon him by the Navy Department in *payments made by him to contractors who, by the terms of their contracts, were to be paid at other places than at Washington, and by other agents*, disbursed, during the period in which he acted as pension agent—about ten years—the sum of \$179,491 32.

From the very large additional risk, responsibility, and labor devolved upon the said William B. Scott by these new duties, for the proper performance of which separate bond was required and given, as well as the losses of property occasioned to him thereby; and from the fact that it was not a part of his office at the time of his appointment as navy agent, as well as the further fact that his successor was allowed and paid a commission for similar services, your committee deem this a case of peculiar hardship, and that in justice and equity the memorialist is entitled to the relief from Congress she prays, for which the accompanying bill is reported, with the recommendation that it do pass.

LIEUT. JAMES M. GILLISS.

FEBRUARY 5, 1859.—Laid on the table and ordered to be printed.

Mr. BOCOCK, from the Committee on Naval Affairs, made the following

R E P O R T .

The Committee on Naval Affairs, to whom was referred the petition of Lieut. James M. Gilliss, asking that the increased pay allowed him as Superintendent of the Naval Astronomical Expedition, under the act of March 3, 1851, be continued to him from the 17th of September, 1855, to this time, have had the same under consideration and ask leave to report :

That the said act of March 3, 1851, was, in the opinion of the committee, designed to extend only to the time during which the said expedition was absent from the country, and that such a construction of it is in no way violative of justice and right.

We know of no reason why Lieut. Gilliss, while engaged in editing the volumes of his explorations, should receive greater compensation than other officers of the same grade while employed on other shore duty. We see no ground for relief in this case.

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H. T. A. RAINALS.

FEBRUARY 5, 1859.—Laid on the table.

Mr. HOPKINS, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred the memorial of H. T. A. Rainals, late United States consul at Elsinore, in Denmark, have had the same under consideration and report:

The alleged facts in this case are similar to those set forth in the memorial of J. P. M. Epping, late consul at Oldenburg, Germany, upon which an adverse report has been already made this session by this committee, and therefore the committee beg leave to be discharged from the further consideration of the same.

H. T. A. HAINES

Presented at the 1887-1888 Session

Mr. Haines from the Committee on Foreign Affairs, made the following

REPORT

The Committee on Foreign Affairs, to whom was referred the memorial of H. T. A. Haines, late Consul at Berlin, in Germany, have had the same under consideration, and report:

The alleged facts in this case are similar to those set forth in the memorial of J. P. M. Hering, late Consul at Oldenburg, Germany, upon which an adverse report has been already made this session by the committee, and therefore the committee beg leave to be discharged from the further consideration of the same.

J. P. M. EPPING.

FEBRUARY 5, 1859.—Laid on the table.

Mr. HOPKINS, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred the memorial of J. P. M. Epping, late consul at Oldenburg, Germany, have had the same under consideration and report:

The memorialist was appointed consul of the United States at Oldenburg, Germany, with a salary of five hundred dollars per annum, under the act of March 1, 1855. By the act of 18th of August, 1856, the salary attached to this consulate was changed to compensation arising from "the fees collected in pursuance of this act," which act was to take effect on the 1st of January following.

The memorialist was immediately notified of the passage of this act, and subsequently pamphlet copies of the law were forwarded to him. He was further notified by the State Department by a circular dated November 8, 1856, a copy of which accompanies this report, that he could decline to remain in office, or remain until a successor was appointed under the provisions of this act.

However hard this law might bear upon this case, yet, by the same law forty-two consulates were similarly affected, the salaries of which amounted to \$35,250.

And, moreover, the case of Mr. Epping seems to have met the sympathy of the government, for in February, 1858, he was appointed to the consulate at Elsinore, in Denmark, with a salary of \$1,500.

If the practice should prevail in our government that when Congress alter the rate of compensation to diplomatic or consular agents the difference should be made up, there would be but little wisdom in such legislation and no practical benefit to the government.

Your committee do not think the case presented entitles the memorialist to the relief prayed for, and therefore beg to be discharged from the further consideration of the same.

J. S. M. ALPHEG.

Presented to the House of Representatives.

Mr. Thompson, from the Committee on Foreign Affairs, reports the following

REPORT.

The Committee on Foreign Affairs, to whom was referred the memorial of J. S. M. Alpheg, late Consul at Hamburg, Germany, have had the same under consideration and report:

The memorialist was appointed Consul of the United States at Hamburg, Germany, with a salary of five hundred dollars per annum, under the act of March 1, 1855. By the act of 18th of August, 1856, the salary attached to this consulate was changed to two hundred dollars, the first collected in pursuance of this act, which was to take effect on the 1st of January following.

The memorialist was immediately notified of the passage of this act, and subsequently pamphlet copies of the law were forwarded to him. He was further notified by the State Department by a circular dated November 8, 1856, a copy of which accompanied this report, that he could decline to remain in office or remain until a successor was appointed under the provisions of this act.

However, this law rights bear upon this case, yet, by the same law, forty-two consulates were similarly affected, the salaries of which amounted to \$35,000.

And, moreover, the case of Mr. Alpheg seems to have been the responsibility of the Government, for in February, 1855, he was appointed to the consulate at Hamburg, in Prussia, with a salary of \$1,500.

If the practice should prevail in our Government that when Congress alters the rate of compensation to diplomatic or consular agents the officers should be made up, there would be but little wisdom in such legislation and no practical benefit to the Government.

Your committee do not think the case presented entitles the memorialist to the relief prayed for, and therefore beg to be discharged from the further consideration of the same.

G. S. MURAD.

FEBRUARY 5, 1859.—Laid on the table.

Mr. ROYCE, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred the petition of G. S. Murad, report:

That the petitioner asks Congress to make an appropriation to pay him the amount of money which he claims to have expended while in the discharge of his duties as United States vice consul for the cities of Jerusalem and Jaffa for five years, commencing some time in the year 1852. The petitioner has not furnished your committee any evidence of the amount expended by him, or if any sum was thus expended, except the evidence furnished by his petition, and that is not sworn to. Your committee have made inquiries at the State Department, and have ascertained that no account or vouchers have been filed by the petitioner in that department. Your committee therefore report against the prayer of the petition, for the want of proof to sustain it.

G. B. MURRAY

February 2, 1929—Read on the floor

Mr. Murray from the Committee on Foreign Affairs, in the following

REPORT

The Committee on Foreign Affairs, to whom was referred the petition of G. B. Murray, report:

That the petitioner asks Congress to make an appropriation to pay him the amount of money which he claims to have expended while in the discharge of his duties as United States vice consul for the State of Tennessee and also for five years commencing from the year 1922. The petitioner has not furnished your committee any evidence of the amount expended by him, or if any was thus expended, except the evidence furnished by his petition, and that is not true. Your committee have made inquiries at the State Department, and have ascertained that no account or vouchers have been filed by the petitioner in that department. Your committee therefore report against the prayer of the petition, for the want of proper evidence.

NANCY WEEKS, OF GEORGIA.

[To accompany bill H. R. No. 865.]

FEBRUARY 5, 1859.—Ordered to be printed.

Mr. LEIDY, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Nancy Weeke, widow of Francis Weeks, of Georgia, deceased, submitted the following report :

The petitioner sets forth in her declaration under the act of February 3, 1853, that her husband, the said Francis Weeks, was an ensign, and served as much as two years in the revolution. She also refers to the declaration of said Francis Weeks, under the act of June 7, 1832, in which said Francis claimed as ensign for same amount of service, but died before any relief was granted to him under said act. She has adduced the following proofs, viz :

The affidavit of Wm. H. Webb, who testifies to having seen the commission of Francis Weeks, but does not know his rank.

The affidavit of Wm. McLeod, a pensioner, of the State of Georgia, who testifies that from conversations with said Weeks, in which he, Weeks, related incidents of the battles of Brier creek and Eutaw Springs, deponent was satisfied beyond doubt that Weeks had served in said battles.

Affidavit of Lieutenant Wm. Coggin, aged 101 years, a pensioner of the United States, who saw Weeks bearing colors at Ninety Six ; also at Eutaw Springs. Second affidavit of same states that said Weeks and himself, at one time on a scouting party, caught and hung seven tories.

Affidavit of John Haines, aged 117 years, a revolutionary pensioner, swears that Weeks was an officer ; that they were at the battle of Ninety Six, at the battle of Brier creek, and that Weeks served three years. Haines claims in his declaration to have served four years, though allowed for less than two years service on his application for pension.

Nancy Weeks, the present applicant, has received as widow of Francis Weeks, a land warrant for her husband's services as an ensign. The department has further recognised the service of her husband by granting her a pension for one year's service as a private.

The committee deeming the evidence adduced sufficient to prove two years' service as ensign, and in view of the meritorious services of said Francis Weeks, and the advanced age of his widow, the present applicant, beg leave to report a bill for the relief of said widow, granting her a pension under the act of February 3, 1853, at the rate of twenty dollars per month, deducting whatever pension she has received under said act.

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Nancy Weeks, widow of Francis Weeks, of Georgia, do hereby report the following:

The petitioner sets forth in her declaration under the act of February 3, 1853, that her husband, the said Francis Weeks, was an ensign, and served as such, at two years in the revolutionary war, and to the declaration of said Francis Weeks, under the act of June 7, 1832, in which said Francis claimed an ensign for some amount of service, but did below any relief was granted to him under said act. She has adduced the following proofs, viz:

The affidavit of Wm. H. Webb, who testified to having seen the commission of Francis Weeks, and that he knew his rank.

The affidavit of Wm. McLeod, a pensioner, of the State of Georgia, who testified that from conversations with said Weeks, in which he related incidents of the battle of River creek and Kiltaw Springs, dependent was satisfied beyond doubt that Weeks had served in said battle.

Affidavit of Lieutenant Wm. Goggin, aged 101 years, a pensioner of the United States, who saw Weeks during colors at Ninety Six; also at Kiltaw Springs. Second affidavit of same states that said Weeks and himself, at one time on a scouting party, caught and hung several Tories.

Affidavit of John Haines, aged 117 years, a revolutionary pensioner, avers that Weeks was an officer; that they were at the battle of Ninety Six, at the battle of River creek, and that Weeks served three years. Haines claims in his declaration to have served four years, and is allowed for less than two years service on his application for pension.

Nancy Weeks, the present applicant, has testified as widow of Francis Weeks, a land warrant for her husband's service as an ensign. The Department has further recognized the service of her husband by granting her a pension for one year's service as a private.

ELNATHAN SEARS, HEIRS OF.

[To accompany Bill H. R. No. 866.]

FEBRUARY 5, 1859.—Ordered to be printed.

Mr. LEIDY, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Mary Miller, one of the children of Elnathan Sears, deceased, late of New York, submit the following report:

The petitioner declares that she is one of the children of Elnathan Sears, deceased, who asserted his claim under the act of May 15, 1828, for a pension, and claimed that he was a lieutenant for as much as two years in the war of the revolution; that he entered the service in 1776, under Captain Milliken, Colonel Paulding's regiment; continued in service as a private for *two years*; enlisted in 1779 for *during the war*, and on the northern frontiers was attached to Colonel Brown's regiment; in November, 1780, appointed lieutenant, and served *three months*, when he was duly commissioned as such; served in different places until 1782, when the command was left with subaltern officers, who continued (he among them) in the service until June, 1783, when they joined the main body, and were disbanded.

Evidence.

Daniel Gunsales swears to the facts so far as Sears' enlistment under Drake, when he marched to the northern frontier; after that he does not *know*, but always understood and believed that he was a commissioned officer in that part of the war. He was called captain when he returned home, in consequence of his commission and command in the army.

John Davis swears that he knew Sears to be a *lieutenant*, and to serve as such until the close of the war; he saw his commission and heard it read.

The file of papers contains a note from Colonel Edwards, (Commissioner of Pensions,) containing a letter from Major Skinner to Lieut. Sears, containing a command to that officer.

The then President of the United States, Martin Van Buren, in referring the case of Mr. Sears to the War Department, says, in pencil writing:

"I have known Mr. Sears for many years. He has represented his county in the State legislature, and is a man of strict integrity.

"M. V. B."

The committee are satisfied, from all the evidence in this case, that the said Elnathan Sears did serve as a lieutenant in the war of the revolution two years or more, and report a bill for the relief of his surviving children or heirs; that is, that they shall receive at the rate of a lieutenant's pay, say for two years' service, deducting what he was paid under the act of May 15, 1828, as a sergeant.

REPORT

The Committee on Revolutionary Claims, to whom was referred the petition of Mrs. Miller, one of the children of Elnathan Sears, deceased, late of New York, submit the following report:

The petition states that she is one of the children of Elnathan Sears, deceased, who asserted his claim under the act of May 15, 1828, for a pension, and claimed that he was a lieutenant for two years in the war of the revolution; that he entered the service in 1776, under Captain William, Colonel Lamb's regiment; continued in service as a private for two years; enlisted in 1779 for three years, and on the northern frontier was attached to Colonel Lamb's regiment; in November, 1780, appointed lieutenant, and served three months, when he was discharged as such; served in the same place until 1781, when the command was left with another officer, who continued (he among them) in the service until June, 1783, when they joined the main body, and were discharged.

Further:

John Davis asserts to the facts so far as Sears' enlistment and discharge, when he marched to the northern frontier; after that he was not there, but always understood and believed that he was a commissioned officer in that part of the war. He was called captain when recruited there, in consequence of his commission and command in the army.

John Davis asserts that he knew Sears to be a lieutenant, and to enter as such on the close of the war; he saw his commission and found it true.

The file of papers contains a note from Colonel Edwards, (Commander of the army,) containing a letter from Major Chipman to him, containing a command to that effect.

SAMUEL WINN, SON OF RICHARD WINN.

[To accompany Bill H. R. No. 867.]

FEBRUARY 5, 1859.—Ordered to be printed.

Mr. LEIDY, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Samuel Winn, of Tennessee, the only surviving child of General Richard Winn, deceased, ask leave to report:

That it appears that Richard Winn, at the commencement of the Revolution, entered the regular service in South Carolina, and was commissioned first lieutenant of rangers in June, 1775. He served under Colonel Thompson, in General Richardson's expedition against the tories in that year. He also served under Colonel Thompson in the attack on Sullivan's island by the British army and navy under Sir Henry Clinton and Sir Peter Parker, which ended in the total defeat of the combined British forces on the 28th of June, 1776. And it is a matter of history that to Colonel Thompson's command, to which Richard Winn was attached, was due a large share of credit and glory of that engagement, as it was that command which effectually held in check two thousand British regulars under Sir Henry Clinton, and prevented them from co-operating with the British fleet under Sir Peter Parker in the attack on Fort Sullivan. In this engagement Richard Winn distinguished himself, and was, in consequence, sent as captain in command of a company to the southern frontier to defend Fort McIntosh, which he did successfully for two days with thirty-two men against a strong body of Indians and tories; but on the third day General Provost led a strong reinforcement to storm the fort, and Winn surrendered on honorable terms of capitulation. Returning to Fairfield district he took command of the militia, and was in several hard-fought battles, and the defeat of the British regulars under Colonel Frazier, at "Hanging Rock," depended in a great degree on his conduct and courage. At the battle of "Hanging Rock" Major Winn was wounded and borne off the field about the time the enemy made good their retreat.

On recovering from his wound, Major Winn continued to give Gen-

eral Sumpter his support until the enemy were expelled from the State. After peace he was elected major general of the militia by the legislature. He served many years in Congress. Having lost most of his property in the revolutionary struggle, he removed to Tennessee in 1812, and died there in the year 1818, never having received a pension or commutation; and the petitioner, his only surviving child, who is now poor, your committee are of opinion is entitled to relief, and herewith report a bill accordingly.

ROBERT PURCHASE.

[To accompany Bill H. R. No. 868.]

FEBRUARY 5, 1859.—Ordered to be printed.

Mr. PARKER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Sarah Purchase, wife of Robert Purchase, a soldier of the revolutionary war, asking that he may be placed upon the pension roll of revolutionary soldiers, report:

That it appears from the evidence produced before the committee that Robert Purchase was a soldier of the revolutionary war, and served as a musician for a period of more than two years. This is very satisfactorily shown by the affidavits of two persons who were his neighbors, and knew him during the war, and one of whom served with him during a portion of the period of his service. This latter witness swears that he has no doubt that he served from August, 1776, during the war, as he saw him at different times in the service until the close of the war; that he served with him in New Jersey and New York; that the said Robert Purchase was in the battle of Long Island, and that they were together in the battles of Stillwater and Saratoga.

It further appears that the said Robert Purchase is now over one hundred years old, and so infirm in mind and memory as to be incapable of making the sworn declaration required under the rules of the Pension Office, and hence the application is necessarily made to Congress on his behalf.

The reason assigned in the petition why no application has heretofore been made by the said Robert Purchase for a pension is that until recently he has enjoyed all the necessaries of life without aid from the government, but reverses have occurred in his old age, and he and his wife now require more for their support than their means afford.

Your committee believe that the said Robert Purchase is fully entitled, under the act of June 7, 1832, to a pension at the highest rate per year given to a musician by said act. They therefore report a bill granting him such pension.

GEORGE SWILLING—CHILDREN OF WIDOW OF.

[To accompany Bill H. R. No. 869.]

FEBRUARY 5, 1859.—Ordered to be printed.

Mr. POTTER, from the Committee on Revolutionary Pensions, made
the following

R E P O R T .

The Committee on Revolutionary Pensions, to whom was referred a bill to grant to the surviving children of Martha Swilling, late of Georgia, widow of George Swilling, have had the subject under consideration and report :

That from the proofs filed in the case of the said Martha Swilling, who filed her declaration under the act of Congress passed July 7, 1838, that her husband, the said George Swilling, did serve, as she alleged, as much as fifteen months in the war of the revolution, and that she was married to her husband prior to the 1st January, 1794, according to the requirements of the said act of July 7, 1838. The committee are of the opinion that she was entitled to the benefit of said act, and they recommend and propose the accompanying bill, granting her surviving children the sum that was due her to the period of her death.

THE HOUSE OF REPRESENTATIVES
IN SENATE AND HOUSE
JANUARY 1871

REPORT OF THE

COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE HOUSE OF REPRESENTATIVES
JANUARY 1871

REPORT

OF THE COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE HOUSE OF REPRESENTATIVES
JANUARY 1871

THE COMMISSIONERS OF THE LAND OFFICE
HONORABLE MEMBERS OF THE HOUSE OF REPRESENTATIVES
AND SENATE
AND THE PEOPLE OF THE UNITED STATES
IN RESPONSE TO A RESOLUTION
PASSED BY THE HOUSE OF REPRESENTATIVES
JANUARY 1871

INDIAN APPROPRIATION BILL.

[To accompany Bill H. R. No. 664.]

FEBRUARY 9, 1859.

Mr. JOHN S. PHELPS, from the Committee of Ways and Means, made
the following

REPORT.

The Committee of Ways and Means, to whom were referred the amendments of the Senate to bill H. R. 644, "making appropriations for the current and contingent expenses of the Indian department and for fulfilling treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and sixty, have had the same under consideration, and beg leave to report as follows:

They recommend that the House of Representatives agree to the 1st, 3d, and 11th amendments of the Senate.

They recommend that the House of Representatives disagree to the 2d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 12th, 13th, 14th, 15th, 17th, 18th, and 19th amendments of the Senate.

They recommend that the House of Representatives agree to the 16th amendment of the Senate, with an amendment, as follows:

After the word "of," in the 3d line of said amendment, insert the words *the treaty of*.

PENSION APPROPRIATION BILL.

[To accompany Bill H. R. No. 662.]

FEBRUARY 9, 1859.

Mr. JOHN S. PHELPS, from the Committee of Ways and Means, made
the following

REPORT.

The Committee of Ways and Means, to whom were referred the amendments of the Senate to the bill H. R. 662, "making appropriations for the payment of invalid and other pensions of the United States for the year ending the thirtieth of June, eighteen hundred and sixty," have had the same under consideration, and beg leave to report as follows:

They recommend that the House of Representatives agree to the 1st, 2d, and 3d amendments of the Senate.

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION OF THE HOUSE OF REPRESENTATIVES
PASSED MAY 12, 1852

REPORT
OF THE COMMISSIONERS OF THE LAND OFFICE

PUBLISHED BY THE GOVERNMENT
WASHINGTON: 1852

THE HOUSE OF REPRESENTATIVES
COMMISSIONERS OF THE LAND OFFICE

REPORT

OF THE COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION OF THE HOUSE OF REPRESENTATIVES
PASSED MAY 12, 1852

THE HOUSE OF REPRESENTATIVES
COMMISSIONERS OF THE LAND OFFICE

ASSISTANT ENGINEERS IN THE NAVY.

[To accompany Bill H. R. No. 870.]

FEBRUARY 9, 1859.

Mr. FLORENCE, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom were referred the petition of assistant engineers in the navy of the United States, asking an appropriation for relief, have had the same under consideration, and submit the following report:

Section 3 of the naval appropriation bill of 1851 provides, "That if any assistant engineer shall have been absent from the United States on duty at the time others of his date were examined, he shall, if not rejected at a subsequent examination, be entitled to the same rank with them." The petitioners come under this category; but although their rank dates back to the time when they were entitled to examination, yet their increased pay does not commence with the date of increased rank, but only from the date of the actual issue of the commission of promotion from the department. In individual cases of this nature it has always been the habit of this committee to recommend relief, deeming them worthy of it according to all the suggestions of justice. From the increasing number of petitions of this nature your committee report a general bill, and recommend its passage.

2000
1870
1871

ASSISTANT SECRETARY OF THE NAVY

JANUARY 1, 1871

Report from the Commission on the Navy, 1870, under the following

REPORT

The Commission on the Navy, created by the act of March 3, 1869, has the honor to submit to the Secretary of the Navy, the following report, which contains the results of its investigations into the condition of the Navy, and the measures proposed for its improvement.

The Commission was organized on March 3, 1869, and has since that time been engaged in a study of the various questions connected with the Navy. It has held numerous public hearings, and has received many suggestions from officers and civilians. It has also conducted extensive research into the various branches of the Navy, and has prepared a series of reports on the different subjects. The following is a summary of the results of its investigations.

The Commission has found that the Navy is in a state of great weakness, and that it is unable to perform its duties as efficiently as it should. It has identified many causes for this weakness, and has proposed various measures for its correction. These measures include the reorganization of the Navy, the improvement of the system of promotion, the betterment of the system of supply, and the improvement of the system of discipline. The Commission believes that these measures are essential for the improvement of the Navy, and it urges the Secretary of the Navy to take prompt action upon them.

BENEFICIARIES OF THE NAVAL ASYLUMS.

[To accompany Bill H. R. No. 753.]

FEBRUARY 9, 1859.

Mr. TIMOTHY DAVIS, of Massachusetts, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred "A bill for the benefit of the beneficiaries of the naval asylums," have had the same under consideration, and beg leave to submit the following report:

The foregoing bill was framed in accordance with the recommendation of the Secretary of the Navy, made in his report of December 6, 1858, that a law be enacted permitting the disabled or worn out seaman who has a home of his own, to which he has retired to pass the remainder of his days, to remain there and receive an annual stipend in money, instead of compelling him to leave it and resort to the asylum to obtain the benefit of the provisions which the government has made for him out of his own earnings.

Your committee have ascertained, by inquiries at the Navy Department and by consulting the laws and regulations governing the naval asylums, that a service of twenty years in the navy and a certificate of a naval surgeon that the applicant for admission to the benefits of the asylum is unable to procure a living by manual labor is necessary to entitle such applicant to admission. Your committee further learn that it sometimes happens that those who are entitled to the privileges of an asylum are prevented from availing themselves of them by reason of their helpless bodily condition and the necessity of the constant care and attention of their families, who support them, and who are, in most cases, very unable to do so, being poor females, who are compelled to obtain a subsistence by severe manual labor.

Your committee beg leave to report back the original bill with amendments, which will not involve any increased expense to the asylum fund, but only, at the discretion of the seaman, give it a different direction; and they think that considerations of humanity alone would suggest the eminent propriety of its passage, which they therefore most cordially recommend.

DESKS AND SEATS OF MEMBERS.

FEBRUARY 15, 1859.—Ordered to be printed.

Mr. MILES, from the Select Committee in regard to a removal of the desks and rearrangement of the seats of members, submits the following

REPORT.

The Special Committee, to whom was referred the resolution of the House of December 23, directing them "to consider and report upon the expediency of removing the present desks from the Hall, and making such a rearrangement of the seats of members as will bring them together into a smaller space, so as to insure greater facility of hearing and more orderly debate," beg leave to report:

That they have given the matter due consideration, and have come unanimously to the conclusion that the removal of the desks, and bringing members together into a more compact area, is not only expedient and desirable, but would, if effected, be in itself a most important step towards many legislative reforms. So far as the desks are concerned, your committee feel—some of them from their own personal experience—that they have become a nuisance. The chief argument for retaining them is the strongest reason for their abolition, viz: the convenient facility which they afford members for writing letters and franking documents. It would certainly seem as if the very first duty of a representative in Congress was not simply to attend bodily in his place, but to listen to, understand, and, when occasion requires it, participate in the discussions and proceedings of the body of which he is a member. This is a truth so self-evident that its enunciation is almost superfluous. But we ask any honorable member candidly to say whether he has found it practicable in his own experience, while absorbed in writing letters at his desk, to attend to what is going on in the House? If it be urged that there are times when even the most conscientious member may feel that he is not called upon to listen attentively—as during the reading of prosy manuscript speeches or the delivering of *ad captandum* "Buncombe" ones, really not addressed to the House, nor intended to influence its action—still we may reply that the very resource of the desks upon which so many fall back as a refuge against dullness or empty sound contributes

to perpetuate the infliction upon the country of evils from which we manage partially to protect ourselves. There can be little doubt that, if there were no desks in the Hall, a very decided improvement would take place in the character of congressional speeches. No one whose misfortune it may have been to be compelled for any purpose to wade through the interminable columns of the "Daily Globe" can doubt that this is a "consummation devoutly to be wished." But it is not merely because the desks withdraw the attention of members from the business legitimately before them—which it is their sworn and *paid* duty to attend to—that their removal is desirable.

The space occupied by the present arrangement of chairs and desks is so large that it is always difficult and sometimes impossible for those at a distance from the Clerk or from the member speaking to hear distinctly. This arises not from any acoustic defect in the Hall but simply from its immense size. The result is that resolutions have to be reported or remarks repeated so often that not only much valuable time is lost, but a degree of noise and confusion ensues very unfavorable to calm and deliberate discussion. It may not be inappropriate in this connexion to remark that the English House of Commons numbering 654 members, holds its sessions in a hall very much smaller than our own which has to accommodate but 236 members. Neither Lords nor Commons, however, in England, have desks, and the arrangement of their seats in consequence is so compact as to bring them into a comparatively concentrated area.

Your committee have conferred freely with Captain Meigs, the able and accomplished Superintendent of the Capitol Extension, who very kindly, at their instance, prepared a diagram of the floor of the house, to assist them in their examination. He also went through with them various measurements, both on the drawing and in the hall itself, with a view to ascertain into how much smaller space members might be comfortably and conveniently seated. As the result of these experiments we are authorised to say that Captain Meigs considers it perfectly practicable to make such an arrangement of seats as will bring members near enough together to see and hear each other distinctly. This is surely a great desideratum, and ought in itself to reconcile members to the loss of the purely selfish enjoyment of their desks. When honorable gentlemen can make themselves heard without screaming themselves hoarse, and hope to catch the Speaker's eye and obtain the floor without scrambling for it with the noise and vociferation of school boys scrambling for an apple; when the distinct reading of a resolution or report once or twice from the clerk's desk will put the entire House in possession of it, we may then expect to have quiet, decorous and orderly debate; real, legitimate discussion of the subject matter pending before us, instead of interminable discussions, *de quolibet ente*, addressed in point of fact to distant constituencies, and not even intended for the ear of the House.

To meet the objection which may be urged against the removal of the desks, that they are necessary at times for the purpose of writing resolutions or supporting books of reference, &c., we would say, that in the re-arrangement of the Hall, in the plan contemplated, ample facilities would be afforded for these purposes. A table placed in the

open space in front of the Speaker's seat would, in itself, be sufficient for both these objects, and would be a convenient spot from which to read extracts from authorities cited in debate. Large tables might also be placed in the corners of the Hall, and supplied with writing materials. Besides, with our present convenient retiring rooms, so immediately adjacent and opening upon our own private lobby, there would be abundant opportunity for writing afforded those who might at any particular time not consider their presence necessary in the House. It would require but a few seconds, certainly not half a minute, to summon a member from either of these rooms in case of a vote, or the coming up of any matter in which he might feel an interest.

In conclusion, your committee have to say that they verily believe that small and comparatively insignificant as the reform which they advocate may now seem, yet, should the House adopt it, the advantages which will flow from it will very soon be so numerous and apparent as not only to impress Congress, but the country at large. It will then be a matter of surprise to all that a plan so simple, natural, and obvious should not have been sooner adopted.

Your committee recommend the passage of the following resolution :

Resolved, That the Superintendent of the Capitol Extension be directed, after the adjournment of the present session of Congress, to remove the desks from the Hall of the House, and to make such a rearrangement of the seats of members as will bring them together into the smallest convenient space.

WM. PORCHER MILES,
GEO. H. PENDLETON,
J. LETCHER,
EDWD. JOY MORRIS,
I. WASHBURN, JR.

LEVEE ON THE MISSISSIPPI RIVER, IN THE STATES OF
TENNESSEE AND KENTUCKY.

[To accompany Joint Resolution No. 47.]

FEBRUARY 15, 1859.—Ordered to be printed.

MR. ATKINS, from the Select Committee, proposes to submit the
following

REPORT.

The Select Committee to whom was referred a joint resolution of this House, and sundry memorials from citizens of Shelby, Tipton, Lauderdale, Dyer, and Obion counties, in Tennessee, requesting a survey of the eastern bank of the Mississippi river, with the view to ascertaining the cost of a permanent levee to protect their bottom lands from overflow, and asking that a grant of lands or other means be furnished by the general government to aid in the construction of said levee, beg leave to report:

That the questions presented for their consideration are of great importance, both as respects the territory proposed to be reclaimed and to the whole country having any relations therewith.

To show how these memorialists came in possession of these lands we will cite the law relative thereto. In "An act to amend an act entitled 'An act to authorize the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same,' passed the 18th April, 1806," the State of Tennessee was constituted the agent of the government, with full power and authority to sell and dispose of the vacant unappropriated and refuse lands within the limits of said State, &c.

In this act we find that Tennessee was authorized to satisfy all legal and bona fide claims of North Carolina upon said lands by making provisions by law. After satisfying the claims aforesaid, "the State of Tennessee shall offer for sale the rest and residue of said lands in such manner, in such quantities, and by such descriptions, as may be most convenient; and for the full term of three years from and after the time herein allowed for the location of North Carolina land warrants, may sell and dispose of, and perfect titles to the same, at a price not less than twelve and a half cents per acre." And finally, "so much of the said lands as may remain unsold at the expiration

of the said term of three years shall be disposed of as aforesaid, at such price per acre as it may bring in open market: *Provided*, That the proceeds of the sale of said lands, over and above so much thereof as shall be necessary to the satisfaction of said North Carolina claims, shall be accounted for and paid over by the State of Tennessee to the United States."

The lands referred to in this law, and which the State of Tennessee was authorized to dispose of, constituted in part all the lands now sought to be protected from inundation by these memorialists. It will be perceived that they purchased them by authority of Congress, and paid what in all probability at that time was considered a fair price for them; taking into account the large amount of more valuable highlands in other portions of the public domain that were then offered for sale by the government at low rates.

It is not a point to be considered, in the investigation of the matters referred to this committee, that because the State of Tennessee incurred certain expenses in its administration of the public lands within her limits, which Congress thought proper to reimburse her, it did, by an act passed in 1846, surrender to Tennessee the proceeds of the sale of said lands, as well, also, the lands then unsold; for that law expressly stipulates that the surrender was made "in satisfaction for services and expenses incurred by Tennessee." This surrender therefore was not a donation to that State, but was made in satisfaction for expenses incurred and services rendered.

The general condition of most of the territory lying on the Mississippi river, in each of the States bordering on it, from about midway in Missouri and the northern boundary of Illinois to the southern limit of Louisiana, is of a low and overflowed character; alluvial in its principal formations, and possessing a degree of fertility unexcelled by any lands on this continent, it has at all times been sought after since it became the property of the United States, in preference to most of the adjacent highlands, of known excellent qualities. But a large majority of this territory was subject to annual overflow by the Mississippi, greatly depreciating its value, and much of which lay so far below its periodic high tides as to render it comparatively worthless.

That portion of it lying in Tennessee and Kentucky is equally valuable for agricultural and other purposes, and similarly liable to inundation with that in the other States bounded by this river. Such of these lands as were above ordinary overflow have been successfully cultivated for many years, yielding profitable crops to the farmer; and from their high character for fertility had acquired a fair value in the land markets of the country.

Swamp Land Act.

By an act of Congress, September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the 'swamp lands' within their limits," it is enacted: "That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold

at the passage of this act, shall be, and the same are hereby, granted to said State.

By this law, as its title indicates, all the swamp and overflowed lands, which were unsold at the passage of the act, were granted to the several States in which they were located, to enable them to construct the necessary levees and drains to reclaim them. This law transferred to these several States, millions of acres of what were called swamp and overflowed lands—see table marked A, in this report—for the expressed purpose of enabling them to build the levees, which have resulted injuriously to the citizens of the States of Tennessee and Kentucky, and are now a subject of complaint.

By this law it will be observed that the general government gave away all the swamp lands to the several States, not only for no pecuniary considerations, for expenses incurred, or otherwise, but for the avowed purpose of enabling them to construct levees and drains for their reclamation, the whole benefit of which was to enure to such States. Out of this munificent fund they have constructed levees in conformity with the tenure of that law, extending along a portion of their river boundaries.

From the information before this committee the operations of these levees have been disastrous in their influence to lands and other property of citizens of Tennessee and Kentucky. We are alluding more particularly, however, to the effects of the levee system in those portions of Missouri and Arkansas lying immediately west and opposite the States named.

By obstructing the diffusion of the water when flowing over the river banks, in all high tides, as these levees do, and preventing its egress over the adjoining lowlands, which extend back from the river ten, twenty, and forty miles, the result is, as might have been readily anticipated in changing the lateral course of this vast sea of water, to force and precipitate its deluging accumulations over the eastern shore; producing overflows from one to three feet higher than was ever known previous to the building said levees; inundating the whole river country; submerging thousands of acres of the most valuable lands in the bottoms; undermining and washing away the bank by the acre, in many places where this shore has withstood the action of the current in all stages for nearly half a century; destroying growing crops; drowning stock of every kind; rendering unsafe the dwellings of the inhabitants; depreciating the value of the lands for all uses; ruining the property and prospects and endangering the lives of many of our citizens. Nor do the evils stop here; the levees built on the western bank of the Mississippi are now being enlarged and strengthened, and are designed for durable and substantial structures; therefore the evils and damages arising from this source must be as continuous as those embankments are enduring.

The facts are within the knowledge of some of this committee, that large quantities of these lands, embracing some of the highest and best on the river, have, within the last year, been thrown out as a barren and worthless waste from the large deposits washed broadcast over them, much of which was caused and consequently attributable to the grievances complained of by these memorialists.

Such, in brief, are the influences of the levee system on the eastern

bank of the Mississippi to lands and other property of citizens on the opposite shore, in Tennessee and Kentucky.

This committee is unable to view this branch of the subject in any other light than that the acts of Congress, already referred to, donating the swamp lands to the several States, are the basis and fountain from which flow many of the disastrous consequences enumerated. Those acts declare that the express object for which the swamp lands were given to the States was to aid in the building of these levees. Had those acts never been passed by Congress, out of which has sprung the levee system, this damaged territory would now be in the enjoyment of its former prosperity, both as respects its yearly productions, its permanency of value, and the security of all other property on it, subject only to such dispensations of Providence as may affect all property in similar locations.

It is no part of our duty to inquire into the original value of these lands or the prices paid for them; whether they were purchased at nominal or high rates, it is evident, with the general enhancement of this class of property everywhere, and the labor and improvements which have been placed upon them, that they have greatly increased in worth over former valuations, and any injury or damage they may now sustain affects their present estimated price. It is in this aspect only the question can be fairly and justly considered.

Many of our most worthy and industrious citizens have their homes upon and their entire property in these lands. There they have purchased their homestead, there they now live, and there they have hoped to make their support, and though many of them may have limited means, we are prepared to appreciate their homes, their property, and their labors to be as dear and as valuable to them as the homes and the labors of the more affluent in life. So should their rights be as sacredly respected by this government as those of any other of its citizens; and when it is known that their rights and interests have been interfered with and their property ruined by the influences of the levee operations on the western shore of the river, as is proven in this instance, and when it is remembered that the levee system is no other than the act of government, the argument is clear and unquestionable that they have just and undoubted claims on Congress for indemnity.

If the general government in its munificence gives away millions of acres of the public domain—called swamp lands though they may—to many of the States for the construction of works detrimental in their nature to the surrounding country, certainly it will not reject the appeals of these people who come here to seek relief from the detrimental consequences growing out of such acts of munificent legislation.

If Congress, in its liberality, has seen proper to make large grants of the public lands for the construction of railroads and other internal improvements, for the support of colleges, schools, &c., surely it will not refuse the petition of these memorialists, who present a claim on it springing from, and rendered valid and binding by its own acts.

The lands and territories of this government were acquired by the common sacrifices and contributions of the people, and their rights in the security and enjoyment of their private property should be

respected in the disposition of them; and while we disclaim the power of Congress to make partial, unnecessary, or unconstitutional appropriations in either lands or money for any purpose, we cannot, upon sound principles, reject the demands of justice and equity, where the rights of innocent parties are involved and endangered by our laws.

The territory embraced in the swamp land act of 1850, was acquired under the same general rules that have controlled the action of government in the acquisition of all lands. When thus acquired it was common property, whether worthless or valuable; while it was the property of the government it was harmless and unoffending; had it remained in its possession, it would have continued so. In the act ceding it to the States it did not occur to these memorialists—and we presume to no one—that they were witnessing an enactment, and assenting to a law, carrying with it a dagger to pierce their own vitals.

The argument that “a State may have no recourse on the general government, although an acknowledged injury has been committed by it, and where the public lands would be involved as a compensation for such injury, because there are no public lands in the State to repair such damage, is untenable, for the sufficient reason that lands heretofore donated to the States for levee or other purposes were the property of the nation. Tennessee and Kentucky, for instance, having their interests in them in common with all the States. It was not the property of the particular State within whose limits it was located, nor had such State, by any principle of our government, exclusive claims to its appropriation. It was domain belonging to the States united, and grants made out of it for any specified purposes were made by the liberality of all the States, for the benefit of the parties receiving it, and for the particular objects for which they were made.”

“Congress, in its liberality, may not make grants of land to any State, where the enjoyment or appropriation of such grants result in detriment and damage to another State, or to private property in another State, and refuse reparation for the injuries done, on the ground that such injured State has no public lands within its limits with which to repair them.”

In order to show the amount of territory, government has already given away under the “swamp land” act, for the especial benefit of individual States, and to exhibit the liberality and lavishness it has exercised in appropriating large quantities of the public lands for various works of internal improvement to many of the States, we have taken the following tables, as we find them in the report of the Commissioner of the General Land Office for 1858:

A.

Statement exhibiting the quantity of land selected for the several States under the acts of Congress approved March 2, 1849, and September 28, 1850, up to and ending September 30, 1858.”

	<i>Acres.</i>
Ohio.....	54,438
Indiana.....	1,324,732

	<i>Acres.</i>
Illinois	3,243,891
Missouri	4,248,203
Alabama.....	2,595
Mississippi.....	2,836,675
Iowa.....	1,752,296
Louisiana.....	11,202,343
Michigan.....	7,273,724
Arkansas.....	8,562,752
Florida	11,790,637
Wisconsin.....	2,827,199
Total.....	55,129,492

Here we have an exhibit of fifty-five millions one hundred and twenty-nine thousand four hundred and ninety-two acres of the public lands, donated by government for no price or consideration, but for the purpose of building levees and drains to protect it from overflow and fit it for cultivation. With such an exhibition of wholesale liberality, this committee does not believe that, government would hesitate to order a survey and to make a donation of lands, if called on for that object, to aid in building levees and drains to reclaim and protect from inundation a similar class of lands, which were purchased and paid for by its owners from government, and which is now being destroyed and ruined by the action of the very levees a large portion of the above named lands were given to construct.

In addition to these acts of liberal legislation, we find others of different purport, of still greater magnitude as to value, in the same report:

The following is an exhibit of the grants of lands for railroads by Congress from the year 1850, showing the States to which the grants were made, dates of laws, &c.

States and Territories.	Dates of laws.	Quantity granted.
		<i>Acres.</i>
Illinois.....	September 20, 1850.....	2,595,053
Missouri.....	June 10, 1852, and February 9, 1853....	1,815,435
Arkansas.....	February 9, 1853.....	1,465,297
Michigan.....	June 3, 1856.....	3,096,000
Wisconsin.....	June 3, 1856.....	1,622,800
Iowa.....	May 15, 1856.....	3,456,000
Louisiana.....	June 3, 1856, and August 11, 1856.....	1,102,560
Mississippi.....	August 11, 1856.....	950,400
Alabama.....	May 17, June 3, and August 11, 1856....	1,213,390
Florida.....	May 17, 1856.....	1,814,400
Alabama.....	March 3, 1857.....	700,000
Minnesota Territory.....	March 3, 1857.....	4,416,000
		24,247,335

Besides the foregoing grants and donations, embracing an aggregate of seventy-nine million three hundred and seventy-six thousand eight hundred and twenty-seven acres in swamp lands and lands granted for the construction of railroads, there have been contributed by the government, for "canals, &c., &c., 10,897,213 acres."

It may be well to observe in this connexion that, we do not introduce into this report the amount of lands granted by Congress for internal improvement purposes, with a view to basing an argument in support of the propositions referred to this committee; we allude to them simply to show the liberal spirit that has actuated Congress in behalf of a large number of public improvement measures which have been presented here for government aid.

After such an array of liberality, absorbing millions of acres of public property, in neither of which were principles of justice, right, or equity involved; no such thing as homes rendered desolate and forsaken, property submerged and ruined, prospects overwhelmed and destroyed, and all these by the hand whose duty it was to foster and protect; where no argument could be advanced in their behalf other than the promotion of certain improvements, many of which were of questionable import, we entertain the belief that this government, in the face of its precedent acts, will as readily and cheerfully exercise its liberality to satisfy the demands of a meritorious claim, as it was in its legislation in the cases referred to.

We will cite an instance or two, out of many that might be collated, where Congress has exercised its authority in favor of propositions involving principles in the abstract, parallel with the measure referred to us.

On July 22, 1854, Congress passed an act making the further appropriation of \$140,000, for the improvement of Cape Fear river, North Carolina.

In signing this bill President Pierce said: "That my approval is given to it on the ground that the obstructions which the proposed appropriation is intended to remove are the results of the acts of the general government."

Again, March 3, 1855, an act was passed by Congress, making a further appropriation of \$161,000, for removing obstructions in the Savannah river, Georgia.

The necessity for this appropriation originated in this manner: During the revolutionary war, while Savannah was in possession of the British forces, under the command of General Provost, the Americans sought to regain possession of that city, relying upon the co-operation of the French fleet, under the command of Count D'Estaing.

Provost sunk several hulks in the Savannah river, to prevent the French commander from approaching the city to aid in the undertaking. To remove these obstructions Congress made this, together with previous appropriations, from the public treasury.

There is now being made a topographical and hydrographical survey of the delta of the Mississippi river, under an act of Congress, with such investigations as might lead to determine the most practical plan for securing it from inundation.

In the foregoing precedents, the constitutional power of Congress

was not doubted by a majority of its members ; it has employed this power from the foundation of the government to this day, and most of its acts have been sanctioned by the people. When, therefore, in the exercise of this acknowledged authority, it is proven that injury has been inflicted to any section of the country, and that, too, perpetual in its character, the power of Congress to remedy or repair the wrong committed is unquestioned and unquestionable.

This committee can arrive at no other conclusion, impressed as each member of it is that, governments, among other considerations, are created for the common and equal protection of its citizens ; that the Constitution and Congress of the United States were established with a view to securing these high and inalienable principles to each of the members of this republic, and to the citizens of each of its members, not for opposite, partial, or oppressive legislation ; and as any other policy than to repair injuries committed by the legislative power would tend to subvert these fundamental objects, and overthrow the rights and expectations of the people, we cannot understand upon what principle of law or equity it will refuse reparation in this case, especially after a full statement of the facts has been brought to its knowledge.

The powers of Congress under the Constitution are general, but specified in their character, limited and defined in their latitude. It is designed that its legislation shall be equal and uniform over all sections ; its burdens and benefits equally distributed ; it shall violate no contracts nor interfere with the vested rights of the people ; its mission is to protect and not destroy the rights and property of the people ; it shall neither take nor destroy the property of its citizens in time of war, except by remuneration ; it possesses no additional power in seasons of peace than when in a state of war ; it shall neither barter nor traffic in the people's rights in a state of either peace or war ; if government is the power and will, collective, of the people, then, like its citizens, it should be responsible for its acts ; if to secure and protect the life, liberty, and property of its citizens form a part of its duties, then it should repair an injury done to its citizens by its own acts as readily and promptly as when such injury had been committed by an alien nation ; and if its swamp land laws of 1850 have resulted in injury to the people of Tennessee and Kentucky, it is obligatory upon it to repair and remove it by counter operations.

We deem a compliance with the demands of these memorialists due to them as an exhibition on the part of Congress to legislate justly and equally to all sections. The States of this Union are equal in their common rights and privileges, and the law-making power of the government should be based upon and controlled by this admitted fact, irrespective of all lateral or secondary considerations.

The overflowed country in Tennessee and Kentucky, is about one hundred and eighty miles in length, and embraces an area of over 1,000,000 acres. Located in the heart of the nation, boundless in its capabilities of production, and adapted to the successful cultivation of every variety of products peculiar to our climate and highlands, con-

tiguous to river navigation and railway facilities, its reclamation is a subject of paramount importance to the States and to the Union.

We might, if appropriate to the occasion, undertake to compute the annual productions of this territory in a reclaimed condition, and their respective values; but as these subjects are not strictly embraced in our present duties, we shall pass them over.

To levee in this country will require an embankment nearly its entire length; and it is to obtain correct measurements, and the cost of its construction, that a survey by the government is asked for.

The people are willing to assist in the labors of this work; but they are wholly unable to defray the entire cost of so great an undertaking. Were they in the enjoyment of the means of liberal government aid, as all their neighbors along the Mississippi are, with which to construct levees, they might, as their neighbors have, by tax, sale, or other means, raise a fund sufficient to build their own embankments. But they have received no such aid. The cost of a levee of the requisite proportions would absorb the worth of their entire river possessions. As they are unable of their own ability to protect themselves; as the grievances from which they now suffer have not arisen from any act or deed of their own, but from the enactments of Congress; and as the lands upon which they now live, and which are being thus damaged, were purchased by them of the government for a valuable consideration, it is just and proper that it should assist them to construct a work for their necessary security, which they are wholly unable to perform of themselves.

It is believed by this committee that the "commerce and navigation of the Mississippi will be promoted by a perfect protective levee system on both banks of the river. Then, in all high tides, the whole volume of water will be confined within the levee embankments; it will not flow over broad surfaces as at present. Thus restricted in its width, its vast accumulations will be impelled onward in its course with accelerated velocity, and, with its increased force and quantity, sweep from its natural pathway many of the lesser islands and sand bars that form with every successive tide, making a deeper, safer, and more permanent channel than has heretofore characterized its ever-changing meanderings."

A substantial system for both shores of the river, will preserve its banks from undermining and washing away as they do now in high water; there will be less alluvium to be carried off by the current; and as these influences would extend through the entire alluvial formations, it would diminish the accumulations of deposit at its delta, and thus be a means of protection to the harbor of New Orleans. The banks being preserved by the presence of the levees, and the water prevented from flowing over the surrounding country, there will be less timber and drift within its reach to be carried off by the floods, and consequently a greatly decreased number of snags to obstruct its channel. In this manner the security of life and property of all who may have occasion to travel or navigate the Mississippi, will be comparatively assured from many of the innumerable disasters that annually occur upon its waters.

An impression has obtained that leveeing this river on both
H. Rep. Com. 179—2

banks would greatly increase its height measurements in flood time, and require many additional feet to be put upon the old embankments generally; but we hold the opposite opinion. A continuous system may and undoubtedly will increase the velocity and force of the current, when the water is high enough for the embankments to exert any influence on it, over what it would be, if permitted to flow over the whole country; but restricted in its limits, with an increase of momentum from the surface to the river bottom, consequent upon its restrictions, with a diminished area of territory to flow over and feed upon, its tendency will be to plough up the river bed from season to season, and deposit the alluvium upon the banks; and thus, while it is furrowing out a deeper channel for its passage, it is increasing the heights and permanency of the shores, and rendering less and less necessary the levee system from year to year.

It seems to us proper to state a few of the leading features of this great river. "Its length is 3,100 miles, and if the Missouri be regarded as its continuation, it is 4,500 miles long. It would reach from New York across the Atlantic, and extend through France, Germany, Austria, and Turkey, in Europe, and penetrate the remote Caspian sea in eastern Asia."

"The total value of steamers afloat on the Mississippi and its tributaries is estimated to be over \$6,000,000, and numbering 1,500, with an aggregate burden of more than twice the steamboat tonnage of England, and probably equal to that of all other parts of the world. It drains an area of 1,200,000 square miles," and its passenger travel is computed at 1,500,000 persons annually. Its commerce and tonnage are increasing in a ratio commensurate with the growth, products, and population of the republic. Any necessary improvements, therefore, that will promote its security and facilitate its navigation, are considerations of national importance, and when carried out redound to the advantage of the whole country.

As the resolution referred to us, asks for a survey of the river boundary of this injured territory, in order to ascertain the cost of a levee for its protection, and as such survey may not require an appropriation for the purpose, the government having engineers in its employ, many of whom are engaged in less important service to the country than the labors contemplated by this resolution; and in order that Congress and these memorialists may be informed as to the measurements and cost of this work, and from the general considerations enumerated in this report, this committee recommend unanimously its adoption by Congress.

JNO. D. C. ATKINS,
ERASTUS CORNING,
J. B. CLARK,
W. L. UNDERWOOD,
WM. KELLOGG,
Committee.

HESTER S. BARTON.

[To accompany Bill H. R. No. 883.]

FEBRUARY 16, 1859.—Ordered to be printed.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial of Mrs. H. S. Barton, widow of the late W. P. C. Barton, surgeon of the United States navy, praying Congress to grant her a widow's pension under the navy pension laws, beg leave to submit the following report:

That they have thoroughly examined the said memorial and the accompanying certificates, and they find the following to be a synopsis of the facts of the case: *Dr. Barton entered the naval service of the United States in April, 1809, and his commission as surgeon was dated June of the same year. During the war of 1812 and 1813 with England, while our navy comprised but a handful of officers, he volunteered, in a season of pressing emergency, his professional assistance in the army operations on the Delaware river, and for several months rendered valuable services there. In 1830, having returned from a cruise in the frigate Brandywine, he was ordered to Norfolk to organize and conduct a naval medical hospital. This was considered at the time a highly important enterprise, and Dr. Barton was chosen to arrange and mature the details of it, because of his acknowledged ability and untiring interest in the welfare of our navy. That institution is a monument of his industry and skill.*

Memoranda.

Dr. W. P. C. Barton, in the year 1814, published a treatise on marine hospitals, together with a scheme for amending and systematizing the medical department of the navy.

In this work he suggests an examination of the professional qualifications of candidates for admission into the medical corps of the navy should be had prior to appointment.

Also, a medical examination of recruits for the navy, and to this end urges that a medical officer of the navy should be attached to

each recruiting station. It is probable that the adoption of this suggestion has been the means of saving many thousands of dollars annually in the cost of the navy. Prior to that time a large proportion of enlisted men became invalids and claimants for pension, without ever rendering material service.

He suggested the abolition of a practice among naval surgeons of collecting fees from sailors suffering from certain loathsome affections but too common among them. This fee was denominated the *five dollar perquisite*, and was a source of considerable profit to surgeons. But Dr. Barton regarded it to be injurious to the popularity of the navy among seamen, and derogatory to the medical officers. This suggestion was adopted.

He suggested the keeping accounts of the expenditure of medical stores, and reporting quarterly, &c., the number of sick in ships.

He suggests that naval hospitals should be built at Norfolk, Philadelphia, New York, New London, Newport, and Boston.

In 1843 he published (a thin quarto) a statutory history of the navy hospital fund, in which he urges that the expenses of hospitals ought to be retrenched.

While in charge of the naval hospital, Norfolk, in 1830-'31, he introduced economical reforms in its management. The following letter (page 29) is in reference to this:

NAVY DEPARTMENT, *March 15, 1831.*

I am sensible of the services rendered by Dr. Barton during his care of the naval hospital at Norfolk, both in the retrenchment of the expenditures of the institution and in improving the general arrangement of the duties of the officers of the establishment.

JOHN BRANCH,

Secretary of the Navy, as Commissioner of Navy Hospitals.

Entirely concurred in.

J. D. INGHAM,

Secretary of the Treasury, as Commissioner of Navy Hospitals.

These two volumes contain abundant evidence of Dr. Barton's zeal to ascertain and correct abuses of every description in the public service, so far at least as it concerned the medical department of the navy.

It might be fairly urged that the writings of Dr. Barton, at various periods, were of far greater value to the government, in the benefits flowing from them directly and indirectly, than fifteen or twenty years of his life passed at sea exclusively employed in prescribing for the sick and hurt.

Early in 1842, Dr. Barton was appointed chief of the Bureau of Medicine and Surgery in the Navy Department, as established by act of Congress—again having been selected as the man best qualified to open and mature the details of such an institution. How incessantly and anxiously he labored to repay the trust reposed in him, his impaired health, after three or four years of trial, only too painfully testified to his friends and family. During his residence in Washington as chief of the Bureau of Medicine and Surgery he suffered

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severely from the diseases incident to the place, and returned to Philadelphia with impaired health and spirits. He never regained his former health.

In 1848 he was ordered to take charge of the naval hospital at Pensacola, Florida, at a time when, at the close of the war with Mexico, that institution contained an unusual number of invalids from the squadron in the Gulf.

While actively engaged in his duties there he received a severe stroke of the sun, which still further radically affected his health.

As a naval surgeon Dr. Barton probably did more for the dignity and advancement of his corps than any other man in it; more for the perfection of the various branches of hospital aids and comfort in the navy, at home and afloat, than all the rest of his corps together; and that at a time when our naval service was much in need of such a systematizing mind as his.

As a medical teacher our country is much indebted to him. For eleven years a professor in the university of Pennsylvania, he contributed much to the high character of that institution, and left it for the purpose of giving his time and energy towards the elevation of a second school of medicine, the Jefferson, which also owes much to his labor in it. It was while a professor in this latter institution that he received an order to sea in the Brandywine, and having given his life to the service of his country, reluctantly resigned the secondary but not less important office of a teacher of his profession.

The President of the Board of Trustees of Jefferson College himself wrote to President Jackson in behalf of the board, begging that Dr. Barton's cruise might be a short one, expatiating on the value of his lectures to the school. The board also offered to keep the professorship open for him until his return. None of these tempting offers, however, could induce him to forego his duty, and in obedience to the government orders he relinquished a position which would have secured to him and his family, many years before his decease, an ample competency.

Dr. Barton was nearly forty-seven years a surgeon in the United States navy, and during twenty-nine years and four months was in actual service of various kinds, the peculiar character of which necessarily impaired his health, and so undermined his constitution that the disease which terminated his long and useful career found him its ready victim.

The country is indebted to his pen and labors for many standard works of science.

In many valuable branches, especially in botany and materia medica, he was the pioneer of American authors, and his works are still acknowledged as unsurpassed. His interest in the navy, which he cherished to his last moments, drew from him several valuable essays, pointing to its welfare and improvement.

Your committee, therefore, respectfully recommend that Congress direct the Commissioner of Pensions to inscribe the name of Mrs. H. S. Barton upon the roll of navy pensioners as the widow of the late Surgeon W. P. C. Barton, deceased.

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RACHEL McMILLAN.

[To accompany Bill H. R. No. 884.]

FEBRUARY 16, 1859. —Ordered to be printed.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Mrs. Rachel McMillan, widow of Robert McMillan, late surgeon in the army of the United States, make the following report:

The petition of Mrs. McMillan shows that her husband was appointed a surgeon's mate in the army of the United States on the 20th day of December, 1819; that he continued to execute said duties continuously for fifteen years, to the entire satisfaction of the government, being stationed at various posts on the northern, southwestern, and eastern frontiers, (where frequently infectious diseases prevailed,) under various commanders, named and proved by the records of the War Office; that his life was in many instances exposed, and his health impaired and undermined, as proved by certificates of two eminent physicians who attended him in the sickness of which he ultimately died, to wit: on the 20th day of December, 1850, in the city of Brooklyn, leaving a widow and only son, a meritorious young man, who, at the time of his father's death, had just received the appointment of resident physician of the Brooklyn City Hospital; that this son, while attending the sick in said hospital, contracted ship fever, and became its victim six months after the disease of his father, thus leaving her widowed and childless, and without means of support.

The committee deem this a case where relief should be granted, and therefore report a bill for her relief.

RACHEL McMILLAN.

[To accompany H. R. No. 864.]

February 14, 1858.—Ordered to be printed.

Mr. FROST, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition of Mrs. Rachel McMILLAN, widow of Robert McMILLAN, late surgeon in the army of the United States, make the following report:

The petition of Mrs. McMILLAN shows that her husband was appointed a surgeon's mate in the army of the United States on the 1st day of December, 1812; that he continued to execute said duties continuously for fifteen years, to the entire satisfaction of the government, being stationed at various posts on the northern, southwestern, and eastern frontiers (where frequently infectious diseases prevailed), under various commanders, named and proved by the records of the War Office; that his life was in many instances exposed, and his health impaired and undermined, as proved by certificates of two eminent physicians who attended him in the sickness of which he ultimately died, to wit: on the 20th day of December, 1826, in the city of Brooklyn, leaving a widow and only son, a meritorious young man, who, at the time of his father's death, had just received the appointment of resident physician of the Brooklyn City Hospital; that the son, while attending the sick in said hospital, contracted ship fever, and became its victim six months after the disease of his father, thus leaving her widowed and childless, and without means of support.

The committee deem this a case where relief should be granted, and therefore report a bill for her relief.

WILLIAM H. DE GROOT.

[To accompany Joint Resolution H. R. No. 53.]

FEBRUARY 18, 1859.—Ordered to be printed.

Mr. BURNETT, from the Committee for the District of Columbia, made the following

REPORT.

The Committee for the District of Columbia, to whom was referred the memorial of William H. De Groot, praying to be indemnified for his losses and damages, and to have refunded to him the amount of his expenditures (less the amount paid to him by the government) incurred by him as the assignee of the contract for furnishing brick for the Washington Aqueduct, report:

That they have examined the claim of the memorialist and the evidence adduced in its support.

It appears that on the 23d of January, 1854, William H. Deggs and Francis H. Smith entered into a contract with Montgomery C. Meigs, acting for and on behalf of the United States, by which they agreed to furnish the latter with not more than forty million nor less than twenty-five million of bricks, at the rate of \$3 75 per thousand, to be used in building the Washington Aqueduct. For the faithful performance of the contract by Deggs & Smith, Columbus Alexander and Alexander H. Mechlin became sureties. Deggs & Smith failed in the performance of their contract, and Mechlin and Alexander undertook to carry it out in their stead. The substitution of Mechlin & Alexander for Deggs & Smith having been accepted by the United States, they became the legal parties to the contract which was subsequently prosecuted in their names.

On the 9th of May, 1855, an agreement was concluded between William H. De Groot, the memorialist, and Mechlin & Alexander, by which the former undertook the execution of the contract on the same terms and conditions, in all respects, as it had been originally undertaken by Deggs & Smith; the memorialist receiving, at the same time, a power of attorney from Mechlin & Alexander, authorizing him to do and perform everything required by the contract. He was to receive payment for the brick delivered, and to act in all respects in their stead, as fully as if he had been the legal party to the con-

tract. All this was done with the knowledge and consent of Captain Meigs, the agent of the United States, who always thereafter treated with the memorialist on the same footing as if he had been the original contractor.

In pursuance of the agreement with Mechlin & Alexander, the memorialist applied himself immediately to prepare for the execution of the contract, by purchasing land for clay and wood; machines for moulding brick; boats, carts, wagons; horses and mules for transporting them; building extensive houses for the accommodation of the workmen; kilns, sheds and roads; making yards, providing tools, hiring hands, and doing everything necessary to enable him to prosecute the work in a manner satisfactory to the government. It also appears that Deggs & Smith, the original contractors, having failed to furnish any brick, or to provide in any way for the execution of their contract, it became necessary for the memorialist to furnish a considerable number before it was practicable to manufacture them himself, in order that the work might not be delayed. This he did without murmuring, though at the loss of all the profits which he would have realized had he been permitted to wait until he could manufacture them himself.

It appears from the evidence furnished to the committee that a kiln of 300,000 brick, made after he had completed his arrangements for the prosecution of his contract, cost, when delivered on the line of the work, \$1,575, and that these brick were worth, at the contract price, \$2,625; showing a profit to the contractor exceeding \$3 50 per thousand.

It also appears from the testimony that, in the purchase of land, wood, boats, wagons, horses, machinery, and tools; building houses and brick kilns; in making yards, roads, &c, preparatory to the execution of his contract, and in the purchase and transportation of brick which his predecessors had failed to provide for, the memorialist had expended the sum of \$63,805 34, and that he was prepared to prosecute the work which he had undertaken as rapidly, and even more rapidly, than was required by the government superintendent; and that his profits would not only have been remunerative, but large and likely to increase, as the operations at the yard and in the transportation of the brick became more systematic.

At this period, about the first of October, 1855, the memorialist, as has been shown, was fully prepared to proceed in the execution of his contract, (everything having been provided to enable him to do so to the best advantage for his own interest as well as to the satisfaction of the government,) and continued to perform the same until the contract was virtually terminated by the United States, through the refusal of Congress to make any further appropriation for carrying on the work, and no complaint was made in relation to the manner in which the contract was performed by the memorialist.

That the contract of the memorialist had been executed with fidelity and to the entire satisfaction of the government is shown by the report of Captain Meigs of the 11th of April, 1856. In this he says of the contractors, De Groot & Darling: "They are waiting orders, and they do not know whether they should make 100,000 or 15,000,000 of bricks for the season's use."

As further proof of the faithful and satisfactory performance of the contract of the memorialist, it appears that at the time the work was stopped by the government there were 418,544 brick unused on the line of the work, and 300,000 in the kilns ready for delivery. But there is, however, no allegation of any default or failure on the part of the memorialist in the manner in which his contract was executed. On the contrary, it appears that the moment the contract was assigned to him by Mechlin & Alexander he set vigorously to work to prepare for its execution, and that at the time it was terminated by the government he was prepared to prosecute it in the most approved and systematic manner. He was provided with everything necessary—with land for clay, with steam engines, machines for moulding, kilns for burning, yards for drying, houses for the accommodation of the workmen, roads, boats, carts, wagons, and animals for transportation, workmen—in short, with everything necessary to enable him to afford satisfaction to the government and to make his contract profitable to himself.

The further prosecution of the contract was ended by the failure of Congress to make an appropriation to carry on the work, and the large, expensive, and necessary preparations made by the memorialist for prosecuting the contract were rendered abortive, and the property thrown upon his hands before he had realized any profit.

“Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury shall settle and adjust with all the parties respectively interested therein, on principles of justice and equity, all damages, losses, and liabilities incurred or sustained by said parties, respectively, on account of their contract for manufacturing brick for the Washington Aqueduct; and he is hereby directed to pay the amount found due by such settlement and adjustment out of the appropriation made for paying the liabilities for the said aqueduct by the act making appropriations for certain civil expenses of the government for the year ending June thirtieth, eighteen hundred and fifty-seven, approved the eighteenth of August, eighteen hundred and fifty-six: Provided, That the said parties first surrender to the United States all the brick made, together with all the machinery and appliances, and other personal property prepared for executing the said contract, and that the said contract be cancelled.

“Approved March 3, 1857.”

The memorialist, under said resolution, surrendered to the United States all the brick then made, together with all the machinery, appliances, and property therein referred to, under the supposition that he would be fully indemnified under said resolution.

At the time the contract was stopped the whole amount of expenditures of the memorialist, as appears from the proved vouchers which accompany his petition, was, exclusive of interest, his own time, and the sum paid to his temporary partner, D. S. Darling, \$64,080 34; the amount received by him \$18,074 85. He subsequently received the sum of \$7,576, out of the amount awarded by the Secretary of the Treasury to Mechlin & Alexander, under the joint resolution of the 3d March, 1857.

Thus it appears that, without reference to loss of time, profits, and damages, and independent of the sum paid to his temporary partner, who reassigned to the memorialist the whole of his interest in the contract, and the numerous personal and other expenses inseparable from the prosecution of the contract in the first place, and his claim for indemnity in the second, the memorialist has expended in money, over and above the amount received, the sum of \$39,429 49.

The committee are not unaware that, by the original agreement, the contractor was to take the risk of a failure of appropriation. But it will hardly be contended, even if the question of a right to indemnity on the part of the memorialist had not been settled by the act of August 18, 1856, and the joint resolution of March 3, 1857, that the government, after contracting with the memorialist for so large a supply of brick, and requiring him to prepare for the execution of his contract in such a manner as to be able to make and deliver 60,000 brick a day, involving an expenditure of over \$60,000 before a single brick could be made and delivered under the contract, might, through caprice or whim, without some overruling necessity, stop the work to the ruin of the contractor. It could never have been the intention of the parties that the government might wantonly stop the work contemplated by the contract, after inducing the contractor to prepare for its execution by the expenditure of large outlays of money. Such a construction would be totally repugnant to every principle of equity and justice. The true construction of the contract undoubtedly is, that any accidental failure of appropriation should be at the risk of the contractor. But it was never intended that after the memorialist had incurred an expense of many thousands of dollars in preparing to execute the contract in a manner commensurate with the views and instructions of its superintendent, the government should terminate it without excuse, and afterwards take possession of the property and improvements of the contractor without fully indemnifying him both for his outlays and loss of profits. Anything short of this would be unjust.

But the question of right on the part of the memorialist to full indemnity the committee understand to have been settled by the joint resolution of March 3, 1857. That resolution, as will be observed, directs "that the Secretary of the Treasury shall settle and adjust with *all the parties respectively interested* therein, on principles of justice and equity, *all damages, losses, and liabilities* incurred or sustained by said parties, respectively, on account of the contract for manufacturing brick for the Washington Aqueduct." Nothing can be broader or more explicit than this resolution. It provides that all the parties *interested* in the contract shall be settled with; not merely the *legal* parties, but the parties *interested* in and "on account" of the contract. This language could have been used for no other purpose than to give to the equitable party, or party to whom the contract has been assigned, a right to his proper share of the indemnity, provided, as Congress supposed, by the resolution. In other words, it was to give to the memorialist a legal claim to such "damages, losses, and liabilities" as he had "incurred or sustained *on account* of the said contract."

By directing the Secretary to settle and adjust "the damages, losses, and liabilities" incurred or sustained by the parties respectively, Congress intended, as the committee believe, to indemnify the memorialist, and all others who had sustained injury, against all losses, whether arising from the actual expenditure of money, deprivation of profits, or damages which they might have sustained in their business, or by reason of having their property and improvements thrown upon their hands. The words "damages, losses, and liabilities," as well by ordinary import as by judicial interpretation, imply that the party who is to be settled with on account of having incurred or sustained them shall have the amplest satisfaction. These words embrace unsatisfied expenditures, damages and profits; and under a proper construction of the resolution the Secretary of the Treasury would have allowed the memorialist not only for the amount of his expenditures, over and above his receipts, but also such fair profits as the contract would have yielded, together with the damages he may have sustained by the interruption of his business, &c. The language of the resolution is susceptible of no other meaning.

But from the report of the Secretary, or rather his award made in pursuance of the joint resolution, it appears that the memorialist was allowed neither expenditures, profits, nor damages. He was excluded on the ground that he was not a legal party to the contract, and could not therefore be recognized as one of the parties who had a right to claim under the joint resolution. The memorialist was not a party to the original contract, but was accepted by the agent of the government as the assignee, and was thus a *legal* party under the resolution, and had a just claim to indemnity under it.

Having once decided that the memorialist had no right to indemnity under the resolution, his decision, judging from the evidence before the committee, was entirely correct; for neither Deggs & Smith, nor Mechlin & Alexander, sustained any damage, loss, or liabilities which the government was bound to make good. Deggs & Smith never suffered any interruption in the performance of their contract. Indeed, there is no evidence that they ever attempted to execute it. Mechlin and Alexander were mere sureties for the faithful performance of the contract of Deggs & Smith; but they assigned it to De Groot, the memorialist, and never incurred any liability, nor sustained any loss, and could not, therefore, justly claim an allowance for losses, liabilities or damages under the resolution.

It seems that a Mr. Kellogg presented a claim, arising after the work had been virtually stopped, and received a portion of the sum awarded by the Secretary of the Treasury under the resolution of March 3, 1857; but inasmuch as there is no connexion between him and the present claimant, the committee have not thought it necessary to inquire further than to ascertain that fact.

But the position of the memorialist is different from that of the parties to whom reference has been made. He became a party to the contract at a period long anterior to the stoppage of the work; he expended, as appears, large sums in the purchase of land, engines, machinery, wood, and all the necessary apparatus and fixtures for carrying on the contract; he built houses and brick kilns, made yards,

roads, and other improvements, and did everything required to enable him to execute his contract with promptitude and despatch. After having done all this, at a large expenditure of money, and having proved his ability to carry out his contract in a manner satisfactory to the government and profitable to himself, the work was stopped, not through any default of his, but by the order of the superintendent. Under such circumstances can it be pretended that he was not entitled to indemnity, and to such an indemnity as would embrace not only the expenditures he had made, but likewise damages sustained?

From this review of the case of the memorialist it would seem that recognized principles of equity and justice require that these amounts should be refunded to him; and these principles are powerfully sustained by the facts that all the property and improvements purchased and provided by the memorialist, at the expense of this large outlay of money, now belong to the government, having been conveyed to it in pursuance of the joint resolution of March 3, 1857. The government cannot take the memorialist's property and enjoy the fruits of his labor without fully indemnifying him therefor.

But this is not all. The memorialist has as much right in equity and justice to damages for his losses, and satisfaction for the benefit which he would naturally have derived from his property and labor, as to compensation for his actual expenditures. The committee regard this as a well established principle of law and equity. The joint resolution of March 3, 1857, intended to provide for a full indemnity, but the Secretary of the Treasury having construed it otherwise, the committee recommend the passage of a joint resolution to meet the prayer of the memorialist for such expenditures as he has made in the fair prosecution of his contract, over and above the amount he has received, and also for the damages he has sustained. The committee have refrained from fixing the amount, and submit the decision in relation thereto to the First Auditor of the Treasury.

ROADS AND BRIDGES IN MINNESOTA.

FEBRUARY 18, 1859.—Laid on the table, and ordered to be printed.

Mr. HUGHES, from the Committee on the Territories, made the following

REPORT.

The Committee on the Territories, to whom were referred the memorial of the legislative assembly of the Territory of Minnesota asking the construction of a road from Brownsville, on the Mississippi river, to Mankato, near the mouth of the Blue Earth river; also the memorial of the same body asking the construction of a road from the Mississippi river to Fort Ridgely; also the memorial of the same body asking an appropriation to construct the St. Paul and Kettle river road; also the memorial of the same body asking an appropriation to construct bridges and culverts on the road from St. Paul to Elliotta; also the memorial of the citizens and settlers of southern Minnesota asking an appropriation for a road from Brownsville to St. Peter's, respectfully report:

That the people of the late Territory of Minnesota having formed a State government, and having been as a State admitted into the Union by the act of Congress of May 11, 1858, have become subject to all the charges and assessments necessary to the construction of roads and other internal improvements under the authority of their State government, to whom it properly belongs to provide for the same, and that no appropriations ought now to be made from the public treasury of the United States for the purposes contemplated by said several memorials, the committee, therefore, recommend that the said memorials lie upon the table, and that they be discharged from the further consideration of the same.

CONSULAR AND DIPLOMATIC APPROPRIATIONS.

[To accompany Bill H. R. No. 666.]

FEBRUARY 24, 1859.—Ordered to be printed.

Mr. PHELPS, from the Committee of Ways and Means, made the following

REPORT.

The Committee of Ways and Means, to whom were referred the amendments of the Senate of the United States to Bill (H. R. 666,) "making appropriations for the consular and diplomatic expenses of the government for the year ending the thirtieth of June, eighteen hundred and sixty," having had the same under consideration beg leave to report as follows:

That the House of Representatives agree to the 1st, 3d, 4th, 6th, and 7th amendments of the Senate.

That the House of Representatives disagree to the 2d, 5th, and 8th amendments of the Senate.

CONSTITUTIONAL AND DIPLOMATIC APPROPRIATIONS

(To accompany H. R. No. 185)

Printed at the Government Printing Office

Mr. [Name] from the Committee on Ways and Means, in reply to the
[Name]

REPORT

The Committee on Ways and Means, to whom was referred the
message of the President of the United States to the House of
Representatives for the consideration and report of the
message for the year ending the 30th of June, 1890, and
also the report of the Committee on Ways and Means, in
reply to the message of the President of the United States
report as follows:

That the House of Representatives agree to the 1st, 2d, 3d, 4th,
and 5th amendments of the Senate.
That the House of Representatives disagree to the 6th, 7th, and 8th
amendments of the Senate.

CHARGES AGAINST A MEMBER OF THE COMMITTEE ON ACCOUNTS.

FEBRUARY 24, 1859.—Ordered to be printed.

Mr. NICHOLS, from the Select Committee on charges against a member of the Committee on Accounts, made the following

REPORT.

The select committee, appointed under a resolution of the House of February 18, 1859, to inquire into the truth of certain charges against a member of the Committee on Accounts of the House of Representatives, which resolution is in the words following, to wit:

“Whereas, in the correspondence of the New York Daily Times signed ‘S,’ under date of the [16th of February, A. D. 1859,] as also in the correspondence of other papers, it is charged that a member of the Committee of Accounts of this House made a bargain to receive money as a consideration for passing claims in said committee, and that subsequently the said member demanded the consideration for said service; and whereas it is further alleged that a member of said committee compelled claimants before said committee to agree to give a portion of the bills before said committee in consideration of their allowance by the same; therefore be it

Resolved, That a committee of five members be appointed by the Speaker to investigate said charge or charges; said committee to report before the close of the present session of Congress”—

Beg leave to report:

The committee, in executing the order of this House, brought before them the witnesses whose testimony is herewith appended. Very early in the examination of the first witness, Mr. Thomson, it was developed that John A. Searing, a member of this House from the State of New York, and Chairman of the Committee on Accounts of this House, was the individual alluded to in the correspondence of the New York Daily Times, upon which this investigation was based. So soon as this fact was elicited, the committee, by a unanimous vote, determined to suspend the examination until Mr. Searing could be informed that he was at liberty to attend the examination, and to confront the witnesses implicating him, and that he had the permission of the committee to cross-examine the witnesses upon any point submitted by them, if he desired so to do.

Mr. Searing accordingly appeared before the committee, but declined to cross-examine, expressing a desire that the committee should conduct the entire examination.

The House will perceive that the examination took a wide range, and that hearsay testimony, and testimony not in strict accordance with the principles of evidence, was admitted against Mr. Searing, and is submitted with this report. All of this, however, was admitted, subject to objection by Mr. Searing. He, however, signified his assent to the mode of procedure adopted by the committee, and expressed a desire that the examination might proceed with the largest latitude.

Upon examination it will be found that the witness, Fitzhugh, swears that he offered to Mr. Searing the sum of \$400 in consideration of his services on the Committee on Accounts in passing his claim of \$8,623 75, which offer, as he alleges, Mr. Searing accepted, and subsequently upon the allowance of the account as hereinafter stated demanded the payment of the \$400 by the witness, but that no money was ever paid Mr. Searing. The account as allowed, was for the sum of \$6,325, being a deduction of 23 per cent. upon the original amount of the bill, and the evidence shows that in committee Mr. Searing favored the reduction.

If Fitzhugh is to be believed Mr. Searing is guilty; there is no other evidence upon which a conclusion of guilt can rest. What degree of credit should attach to the testimony of Fitzhugh the committee do not attempt to decide. It is a question for the House alone.

The committee are of the opinion, however, that, upon the whole case, the evidence would not warrant the conviction of Mr. Searing of the offence charged.

As the resolution of the House only directs an investigation and a report during the present session, without recommending any specific action, this report might be closed here. It is due, however, to the other members of the Committee on Accounts to state that, no charge has been made or fact elicited against them, or any one of them. On the contrary it is distinctly proved that their conduct in connexion with the organization of this House, has been characterized by strict integrity, and by a sound regard for economy. In the language of one of the witnesses, "there is no charge or rumor against them;" and, from the testimony, your committee, to adopt the language of the same witness, will conclude by saying that "there is no breath of suspicion affecting their character or action."

In all matters pertaining to the examination of the subject referred to them, your committee have been unanimous in their conclusions.

The committee herewith report the following resolution:

Resolved, That upon a review of all the testimony taken in the matter of the charge against John A. Searing, a member of this House from the State of New York, and chairman of the Committee of Accounts, the evidence would not warrant a conviction nor subject him to expulsion.

All of which is respectfully submitted.

M. H. NICHOLS, *Chairman*,
WARREN WINSLOW,
CLARK B. COCHRANE,
GEORGE EUSTIS, JR.,
WILLIAM G. WHITELEY.

JOURNAL.

MONDAY, *February* 21, 1859.

The committee met upon the call of its chairman—all the members present.

The following is the resolution appointing this committee, a copy of which was furnished from the clerk's office:

THIRTY-FIFTH CONGRESS.—SECOND SESSION.

CONGRESS OF THE UNITED STATES, IN THE HOUSE OF REPRESENTATIVES,
February 18, 1859.

Whereas, In the correspondence of the New York Daily Times, signed "S.," under date of the [sixteenth of February, A. D. 1859,] as also in the correspondence of other papers, it is charged that a member of the Committee of Accounts of this House made a bargain to receive money as a consideration for passing certain claims in said committee, and that subsequently the said member demanded the consideration for said service; and *whereas* it is further alleged that a member of said committee compelled claimants before said committee to agree to give a portion of the bills before said committee, in consideration for their allowance by the same; therefore, be it

Resolved, That a committee of five members be appointed by the Speaker to investigate said charge or charges; said committee to report before the close of the present session of Congress.

Attest:

J. C. ALLEN, *Clerk*.HOUSE OF REPRESENTATIVES,
February 19, 1859.

In pursuance of the foregoing resolution, the Speaker appointed the following named members to constitute the committee:

Mr. NICHOLS, (M. H.,) Ohio.
Mr. WINSLOW, (WARREN,) North Carolina,
Mr. EUSTIS, (GEORGE, jr.,) Louisiana,
Mr. COCHRANE, (C. B.,) New York,
Mr. WHITELEY, (W. G.,) Delaware.

Attest:

J. C. ALLEN, *Clerk*.

It was

Ordered, That Mr. Blair Lord be appointed clerk and stenographer for this committee.

The following witness was examined:

No. 1. John D. Thomson, Washington, D. C.

Pending the examination of this witness,

Mr. Winslow moved that Mr. John A. Searing, of New York, be notified that his name has been connected with this investigation, and that he be invited at once to attend before this committee.

The motion was agreed to unanimously, and Mr. Searing subsequently appeared, and the examination of the witness was resumed.

Adjourned to meet to-morrow morning at 10 o'clock.

M. H. NICHOLS, *Chairman*.

TUESDAY, February 22, 1859.

The committee met pursuant to adjournment—all the members present.

The following witnesses were examined:

No. 2. J. W. Fitzhugh, Virginia.

No. 3. Charles B. Shirley, Washington.

No. 4. James C. Allen, Clerk House of Representatives.

No. 5. John F. Carter, Clerk's Office House of Representatives.

No. 6. John Bailey, Clerk's Office House of Representatives.

No. 7. William F. Russell, House of Representatives.

No. 8. John Dick, House of Representatives.

No. 9. A. J. Larner, Washington.

No. 10. Paulus Powell, House of Representatives.

Adjourned to meet to-morrow morning at 10 o'clock.

M. H. NICHOLS, *Chairman*.

WEDNESDAY, February 23, 1859.

The committee met pursuant to adjournment—all the members present.

The following witnesses were examined:

No. 11. James W. Simonton, New York.

No. 12. J. C. Mason, House of Representatives.

No. 2. J. W. Fitzhugh, (recalled.)

The committee informed Mr. Searing that if he desired to submit any statement to them, he was at liberty to do so. Mr. Searing subsequently submitted a statement in writing. [See testimony.]

The Chairman was instructed to ask leave of the House to have the testimony printed for the use of the committee forthwith.

Adjourned to meet to-morrow morning at 10 o'clock.

M. H. NICHOLS, *Chairman*.

THURSDAY, February 24, 1859.

The committee met pursuant to adjournment—all the members present.

The committee proceeded to consider the report to be made to the House. After some discussion a report was unanimously agreed upon, and the Chairman was instructed to submit the same to the House.

The committee then adjourned *sine die*.

M. H. NICHOLS, *Chairman*.

TESTIMONY.

No. 1.—JOHN D. THOMSON, WASHINGTON CITY.

FEBRUARY 21, 1859.

JOHN D. THOMSON called and examined:

By Mr. Cochrane:

Question. Where do you reside?

Answer. In Washington city.

By Mr. Winslow:

Question. What is your occupation?

Answer. I have none, now; I was formerly in the upholstery business.

Question. How long have you been out of employment?

Answer. I was engaged in the Capitol here up to a little over a year ago; up to the expiration of the term of the last clerk of the House. I was employed here as a clerk under General Cullom. Previously to that, I was employed in another capacity.

Question. Do you know anything about the subject of the correspondence of the New York Times, referred to in the resolution authorizing this committee?

Answer. Yes, sir.

Question. Are you the author of that correspondence?

Answer. No, sir.

Question. Do you know the author?

Answer. I suppose Mr. Simonton is.

Question. Do you know of your own knowledge?

Answer. I did not see him write it.

Question. Do you know that he wrote it?

Answer. I think I can testify that he is the author of that correspondence, because he consulted me about it, and I gave him some information that is contained in it. The correspondence is founded partly upon what I told him.

Question. How did you come before the committee?

Answer. I was summoned by Mr. Nichols.

Question. How did he know that you knew anything about it?

Answer. I do not know.

Question. Did you go to him and tell him?

Answer. I did not.

Question. Now tell us all you know about this matter?

Answer. During the early part of the last session of Congress, Mr. J. W. Fitzhugh had a bill against the House of Representatives for furnishing—it came under the head of “furniture and repairs,” I believe—and he presented it to the Committee on Accounts, and there was some action had on it; at least that is the understanding I had of it, though I was not present, and do not know this action to have

taken place. I understood that the committee laid the bill by upon the suggestion of Mr. Carter. It was then put into Mr. Searing's hands for examination.

At this stage of the examination Mr. Winslow moved that Mr. Searing be notified that his name has been connected with matter under investigation, and that he be requested at once to attend before the committee. In a few minutes Mr. Searing appeared, and the witness resumed his statement.

As I said before, it was represented to me that the bill was referred to Mr. Searing for his examination.

By Mr. Cochrane:

Question. What time was this?

Answer. I cannot tell the exact time; it was during the early part of the session.

Question. Was it in December or January?

Answer. It was in January, I think; and it remained that way until about the 1st of May.

By Mr. Winslow:

Question. Was this the last session of Congress?

Answer. Yes, sir; I was acting as Mr. Fitzhugh's adviser in the matter. He was living in the country himself at the time, and got me to watch the progress of the thing, and to let him know when anything was done. I did so, and after I sent him word he came to town. He could not get any satisfactory answer from the committee. His answer to me, when I asked him about it, was that they told him they did not think they would allow anything to him.

By Mr. Eustis:

Question. If you do not know of your own knowledge you need not state this; confine your statement at present to what you know yourself.

Answer. I stated this because I thought it was necessary to bring out what I know about the matter.

By the Chairman:

Question. Can you state any conversation between yourself and Mr. Searing, or between yourself and any member of the committee implicated?—otherwise it would not be testimony.

Answer. I have just got to what I know of my own knowledge. I advised Mr. Fitzhugh to go to Mr. Searing, as I had understood that the bill was referred to him, and see what the difficulty was; see what was in the way. He did so. I told him to let me know when he came back what was the substance of the conversation between him and Mr. Searing. He told me, and I inferred from it that there was something behind the screen that I could not get at. I told Mr. Fitzhugh that I believed there was money needed in the matter; that somebody would have to be paid to get that bill passed; that they could not be so unjust as to throw it out entirely. I told him that the committee must believe that some service had been rendered for a bill which was over \$8,000. I advised Mr. Fitzhugh to go and see Mr. Searing again and talk with him.

By Mr. Cochrane:

Question. What was the exact amount of the bill?

Answer. It was \$8,625.

Question. Is that the exact amount of the bill as it was rendered?

Answer. It might vary twenty-five or fifty cents from that, one way or the other. That, however, can be shown from the clerk's report, as printed.

Mr. Fitzhugh had another interview with Mr. Searing. I was in the neighborhood, waiting for him. He told me the substance of that interview. He also had a third interview with Mr. Searing. Every time he told me of the conversation at these interviews I was the more impressed with the belief that there would be made a demand for money. I told him to keep going there and the thing would develop itself in some way. I think it was at the third interview that he came out and told me about it. I was in a public house adjoining the house where Mr. Searing roomed. He said to me, "I can get the thing arranged, but I will have to pay \$400 for it." I was, of course, very indignant about it; but Mr. Fitzhugh needed the money, and I advised him to sacrifice that amount to get the money upon his bill. The Committee on Accounts met soon after. I was up here with Mr. Fitzhugh. The bill was brought up in committee. The committee adjourned and came out. I stood at the end of the passage below, and saw Mr. Searing, when he came out of the hall of the House and handed the bill to Mr. Fitzhugh. I was out of hearing distance, but I was where I could see very plainly. Mr. Shirley and myself were standing together there, and saw this transaction.

Question. What Shirley was that?

Answer. Charles B. Shirley. Mr. Fitzhugh came back to us and said "Here is the bill, deducting \$2,300, and Mr. Searing demands the money; says he wants the \$400."

By Mr. Eustis:

Question. Did you ever have any conversation with Mr. Searing?

Answer. I never spoke to him in my life. As I was saying, Mr. Fitzhugh said to us, "He says he wants \$400; what shall I do about it?" I said, "tell him that you have not got the \$400; that you cannot pay him until you get the bill paid." Mr. Fitzhugh asked me if I could advance the money, or make any arrangement by which he could get the \$400 to give to Mr. Searing. I said, "tell him he cannot get the money until the bill is paid."

Question. How does it happen that having charge of this bill during the absence of Mr. Fitzhugh, and also, subsequently, that you never had any conversation or intercourse with Mr. Searing?

Answer. I did not say that I had charge of the bill.

Question. I understood you to say very distinctly, a very few minutes ago, that you were the adviser of Mr. Fitzhugh, and that as he was away from the city, you had undertaken during his absence to take charge of or look after his interests in this city; was not that so?

Answer. Yes, sir; but without having charge of this bill at all.

By Mr. Winslow:

Question. Was this during the first session of this Congress?

Answer. Yes, sir.

Question. You had been in the employment of the House of Representatives before that time?

Answer. Yes, sir.

Question. What time was it that this conversation which you have related took place?

Answer. The bill was passed by the committee for \$6,325 on the 10th of May last; and the conversations I have related were during that week and the week before.

Question. When did you first communicate these facts or make them public?

Answer. I have communicated them publicly in the streets and everywhere since that time.

Question. And you advised him to pay the \$400?

Answer. No, sir; I did not say that. I told Mr. Fitzhugh to tell Mr. Searing that he could not pay him the \$400 until he could get the money on his bill.

Question. You said before that, that though you were indignant and shocked at it, you advised him to agree to it?

Answer. Yes, sir; I told him to agree to it.

Question. Now do you not think it was your duty—and I tell you plainly that I ask this in order to impeach your testimony—to have communicated these facts to Congress?

Answer. Where a man's money is involved I would advise him to make any sacrifice to get his rights.

Question. Was any of it your money?

Answer. No, sir.

Question. Did you get any compensation for your services?

Answer. No, sir.

Question. Why did you advise fraud upon the government?

Answer. I did not advise fraud upon the government.

Question. Did you not advise him to accede to that proposition?

Answer. Yes, sir.

Question. Did you not think it was your duty to make this known, instead of advising him to do that which was a fraud upon the government?

Answer. I was not his legal adviser in the matter; but I thought he better pay somebody and get his money and be done with it.

Question. I understand you to say that you, having been an officer of the government about this Capitol, seriously advised the applicant for this claim to pay a member of the Committee on Accounts the sum of \$400 to pass his claim.

Answer. I did not seriously advise him to do anything of the kind. I understood that a demand for that much money had been made. The bill could not be got through in any other way, and I advised him to accede to it and do anything to get his money.

Question. You say that you talked about this thing in the streets openly?

Answer. I did not go to the street corners and preach it out, but when the subject was broached I talked about it publicly. I made no concealment of it.

Question. To whom did you communicate it?

Answer. I do not know as I could give any names in particular.

I believe everybody about here knows something about it—has heard the rumor.

Question. I can say I never heard of it before.

Answer. The Committee on Accounts, I understand, have heard of it.

Question. Did you mention it to the chairman of the Committee on Accounts?

Answer. No, sir.

Question. Did you mention it or communicate it to the Speaker of the House?

Answer. No, sir.

Question. Did you mention it to any member of Congress?

Answer. I do not recollect that I did. I have a very limited acquaintance among members of Congress.

Question. Why has this affair been kept till now?

Answer. I have been in favor of bringing it out all the time.

Question. Whom have you been endeavoring to get to act upon it?

Answer. I have not taken a very active part in bringing it out. When the question was asked me, I stated all the facts I knew about it.

Question. You stated that you had been in favor all the time of having this affair brought out; what have you done to further that object?

Answer. I cannot say that I have done anything. This rumor was abroad. Mr. Simonton came to me and asked me about the facts in the case, and I told him what I knew.

Question. Was this the same Mr. Simonton who was before Congress last Congress?

Answer. Yes, sir. He asked me to state the facts to him and I did so.

Question. When was that?

Answer. Within a week, I think.

Question. What further do you know about this matter? Have you completed your statement?

Answer. No, sir; I had merely got to the demand for the money, when the bill was presented. I advised Mr. Fitzhugh to tell Mr. Searing that he could not pay the money until the bill was paid. He did so, and Mr. Searing advised him to go and present his bill to the clerk's office and see if they would pay it.

By Mr. Cochrane:

Question. How do you know that?

Answer. Mr. Fitzhugh came to me and told me so.

By Mr. Winslow. That is merely hearsay evidence, and should not be received, unless Mr. Searing has no objection to it.

By Mr. Searing. I have none at all.

By Mr. Cochrane:

Question. You will then go on with your statement.

Answer. Mr. Searing advised Mr. Fitzhugh to go to the clerk's office, present his bill and make the demand for the money; and then if he did not get it paid, to bring it back to him and he would see if he could not arrange some way to get the money for him. Mr. Fitzhugh made the demand at the clerk's office for the money, and they

told him that they had no appropriation to pay the bill and they could not pay it. The bill was then put into Mr. Searing's hands again, and he had it for several hours, and finally returned it with the answer, that it could not be paid until after the appropriation bill was passed.

Question. Who returned that answer?

Answer. Mr. Searing did; or rather Mr. Fitzhugh told us that Mr. Searing said so. We were in the neighborhood at the time. The appropriation bill was passed and Congress adjourned. The clerk's office again refused to pay the bill because there was no estimate for it; and it remained in that way until in November last, when Mr. Bailey, one of the clerks in the office sent for me. I came up here and sent in word to him by a gentleman that I would meet him outside. He came out to see me, and approached me in this way—this I give of my own knowledge—said he: "Mr. Thomson, did Fitzhugh ever get his money for that bill?" I told him he knew very well that he did not get it, as he was in the clerk's office. He talked a little more, and then he said: "Well, between you and I, he ought to have got that money; it ought to have been paid to him long ago." And he went on to say, "if you will take my advice you can put him in the way of getting the money." I told him that Fitzhugh wanted the money very badly, as he was paying exorbitant interest for money now. I asked his advice about it. Said he: "Well, you know that Fitzhugh told the colonel," that was Colonel Carter, "that he had to make an offer to pay money for this bill, and there were a great many rumors about it in the street, and it is necessary to clear up all this matter, and to get rid of the charge which is hanging over Mr. Searing, I can indicate a way, which if you will pursue it, will bring it out all straight." I asked him what he would advise. He said: "You understand this matter all through from beginning to end, sit down and write a letter to Mr. Fitzhugh, and state how the thing stands, and that he can get the money as soon as he signs a paper withdrawing this charge. Now you sit down and write a letter, address a letter to Colonel Carter, and set forth that the charges are all false and ridiculous, and that there is no truth in them. Send that letter to Mr. Fitzhugh to sign, and let him remail it to Colonel Carter, and the money will be paid." I said that I thought that would be dishonorable; that I for one would never agree to withdraw those charges, for according to my belief they were true, and I would not consent to withdraw them. We had several interviews about the matter. I did not communicate this to Mr. Fitzhugh, because I was not in favor of his withdrawing those charges; I wanted him to come out and tell the whole thing. Mr. Bailey and I had several conversations in which he tried to persuade me all the time to have these charges withdrawn. I told him that they had acted unjustly towards Mr. Fitzhugh, cutting off his bill, and I would never advise him to do so. In the course of a week or two, or a little more, Mr. Fitzhugh came to town, and I told him everything that had been done. I advised him not to act in the matter the way they advised. He said he wanted his money and would do anything to get it and be done with it. After a long conversation we agreed to go up and see Mr. Bailey. The same conversation passed again. He finally agreed to sign such papers as would be satisfactory. Said Mr. Bailey, "I will get Colonel

Carter to write a letter, stating what has been said in the matter, and you can sit down and answer it in writing." He got Colonel Carter's letter and brought it and showed it to me, and showed it to Mr. Shirley, who was present. We read it over, and Mr. Fitzhugh made some very hard remarks about it, saying that it was very hard to withdraw these charges and submit to anything of this kind for the purpose of getting the money. But he agreed to do it finally. We talked over what kind of answer should be made to this letter of Colonel Carter. I went up to see Mr. Bailey and told him that there was some difficulty as to what kind of an answer would suit their purposes. We talked it over and he said he would write the answers himself.

Question. Who said that?

Answer. That was Mr. Bailey. He prepared the letters and they were brought down stairs to us and we looked them over; I agreed to sign them solely for the purpose of getting this money. That was the distinct understanding between all of us. I took the papers before signing and carried them to a legal friend of mine and asked him the effect of signing these papers. He said it would have no effect at all, as it would be obtained under duress, and it was done solely for the purpose of getting the money. Said he: "If you sign these papers it will not harm you in any way." After I got that advice I came back and signed the letters, and the money was obtained on the bill. By the way, Mr. Carter got out of the way that afternoon, and I began to suspect that this was only a trick to obtain our signatures to these papers and the money would not be forthcoming. I expressed myself in that way to Mr. Bailey, and he repeated over and over again that I need not be alarmed at all; that that was all they wanted and the money would be paid. Well, the money was paid the next day.

Question. Was anything said about the balance of the bill?

Answer. There was a great deal of complaint about the committee having cut off this amount, and we were very indignant about it. Mr. Bailey pledged himself and the clerk's office to get that balance passed as soon as Congress met and the Committee on Accounts held a meeting and had got to work. He said that that balance which had been cut off, was cut off unjustly, and that Mr. Fitzhugh was entitled to it, and they would use their influence to get it paid; he pledged himself to obtain that balance for Mr. Fitzhugh.

Question. Was that pledge, or whatever you call it, made to you before you signed those letters?

Answer. Yes, sir; that was a part of the inducement to sign the letter. Getting the money upon the bill as it passed was one inducement; the getting the balance was the other inducement.

Question. Is that the end of the story?

Answer. That is about the end of it, so far as I know anything about it.

Question. Now I want to ask you a few questions about this matter. Where does Mr. Fitzhugh live?

Answer. He is living in Prince William county, Virginia, now. At the time he contracted this bill he was a resident of Washington.

Question. This bill was for upholstering done for the House?

Answer. Yes, sir; furnishing the new Hall.

Question. Was there any contract made with him?

Answer. No, sir; it was done then the same that it is done now—given out by the Clerk.

Question. And he made this bill under this order of the Clerk?

Answer. Yes, sir.

Question. When was the order given by the Clerk?

Answer. Prior to the meeting of this Congress. It was commenced in the October or the November before.

Question. Had you any interest in the contract?

Answer. No, sir; none at all.

Question. Had you any interest in the bill?

Answer. Not at that time. I acquired an interest after the bill had passed, but that was an interest in the balance that was due, in the amount that had been cut off.

Question. You mean the balance that was not allowed?

Answer. Yes, sir; and which was due.

Question. Up to the time this bill was paid, except the \$2,300, had you any interest in it?

Answer. No, sir.

Question. What connexion had you with Fitzhugh?

Answer. None, any more than we were friends; he was an intimate acquaintance of mine. I got him the situation which he had here.

Question. What situation did he have?

Answer. That of furnishing and doing repairs here. I had been acting in that capacity myself before that time, but I declined afterwards in favor of Fitzhugh.

Question. Then, in the first place, you had the contract?

Answer. The year before I had the same kind of work to do. I had the same work to do in the old hall.

Question. And you surrendered it in behalf of Mr. Fitzhugh?

Answer. Yes, sir; but a long while prior to this transaction.

Question. Do you know, of your own knowledge, what Fitzhugh's pecuniary circumstances were at the time this bill was before the committee unpaid; whether he was poor and had borrowed money, &c.

Answer. He was not a poor man. He was a house carpenter, and had several houses in town here, which he had acquired at his trade; and after he was dismissed from his situation here he traded them off and bought a farm. I suppose he had enough to live on.

Question. Do you know whether or not he was embarrassed?

Answer. He was embarrassed, I know; or rather, he owed money, and had not the money to pay it with. I know that his notes were laid over in bank, and my name was on some of them, upon some bank paper of his that was laying under protest.

Question. At the time you signed these papers?

Answer. Yes, sir; the notes were laying in bank then, and had been laying there for some months.

By the Chairman:

Question. You say that you were never present during any conversation between Mr. Searing and Mr. Fitzhugh?

Answer. No, sir.

Question. You never heard any words that passed between them?

Answer. No, sir.

Question. And your entire statement about Mr. Searing's demanding money was derived from Mr. Fitzhugh's statement to you?

Answer. Yes, sir; it was derived from him entirely.

Question. Did Mr. Fitzhugh actually pay any of that money out of the \$6,328 allowed to him?

Answer. No, sir.

Question. Did he receive that amount?

Answer. He received all that was allowed by the committee.

Question. Did you not know and understand at the time that allowance was made that it was made after a full investigation of the committee, and after a sub-committee had been appointed to examine the bill in reference to the charges made for furniture at other places, and a reduction was made for over-charges?

Answer. I never heard it stated in that way. I understood the matter from the clerk of the committee. The committee had a clerk who used to tell me all the transactions in the committee.

By Mr. Winslow:

Question. Who was that clerk?

Answer. His name was Wright.

Question. Is he in the employment of the committee now?

Answer. No, sir.

Question. When was he here?

Answer. He was here up to the first of this session.

Question. Where does he live? I ask this because I think he should be reported.

Answer. He lives in Baltimore county, Maryland, I think.

By the Chairman:

Question. You are not aware, then, of any such fact existing, that the committee took the bill and made an inquiry of furniture dealers as to the amount to be charged?

Answer. I will tell just what I know about it. Mr. Carter first said that the bill was one-half too high, and he would prove that it was so. That was the first objection to the bill. A proposition was then made to Mr. Carter and to the committee to arbitrate the matter, to leave it out to any competent parties who were in that business, and let them fix the price. That, I believe, was done, and, as I understood, with the approval of General Dick. Mr. Carter selected a man. I advised Mr. Fitzhugh. I said to him that I thought the bill was right, and I advised him to abide by the decision of Mr. Carter's man, and not insist upon having a party in the arbitration. He told Mr. Carter to let the bill be fixed by any man in the trade he might pick out, for he would agree to it. Mr. Carter agreed to do that, I understood, but upon the day the arbitration was to be made he insisted upon Mr. Fitzhugh selecting a man, and he did select him. I saw them and heard them go through the bill and examine the work all through. They came back and said that in reality they were in favor of deducting nothing, but as there was some little bad work among the cushions in the galleries that needed some little repairs, they estimated that \$180 50 should be knocked off the bill. That was the award of the arbitrators.

By Mr. Eustis :

Question. How long have you been living here?

Answer. I have been living in the district all my lifetime.

Question. Have you any personal acquaintance with Mr. Searing?

Answer. None in the world.

Question. Have you never spoken to him?

Answer. No, sir.

Question. Did you have any reason for not speaking to him?

Answer. No, sir, none in the world; I never had any occasion to do it, I did not know him, and I never sought his acquaintance.

Question. Did you ever have any conversation with any member of the House in relation to this matter?

Answer. I cannot say that I have; I cannot name any one; I have conversed with a great many people about it; but I cannot recollect them now.

Question. The thing which strikes me with some surprise is, that while you took so much interest in this bill, you should avoid the person you implicate in this matter?

Answer. I had no reason to see him; I could not go to Mr. Searing and say anything in behalf of the bill, because he could very easily tell me that I was meddlesome and interfering, and put me off in that way; I could do nothing in the matter; I could take no active part in it; I could not go and demand payment upon the bill, because I had no authority to collect the money even if they wanted to pay me.

By Mr. Cochrane :

Question. Then you never had any interview with Mr. Searing; never was present when any conversation occurred between Mr. Fitzhugh and Mr. Searing in reference to this matter?

Answer. No sir; I have never been in the presence of Mr. Searing at all.

By Mr. Winslow :

Question. Were you engaged in the clerk's office during the last Congress?

Answer. Yes, sir.

Question. You said you had some contract to furnish the old hall?

Answer. Yes, sir.

Question. Was that while you were in the clerk's office?

Answer. No, sir.

Question. When was it?

Answer. I gave up the contract to Mr. Fitzhugh and took employment in the clerk's office.

Question. Had you any interest at all in the bill under consideration?

Answer. No, sir; I acquired an interest in the remainder of the bill after what had been allowed by the committee had been paid.

Question. Were you instrumental in getting him that contract?

Answer. I had the job to do that very work; Mr. Fitzhugh had the job under me of repairing locks and everything of that kind, making boxes, &c.; when I applied for the situation, which I obtained, under Mr. Cullom, I told Mr. Fitzhugh to take the work I had on hand and do it himself.

Question. Had you any interest in the bill all the time this matter was going on in which Mr. Searing is implicated?

Answer. No, sir.

Question. What interest have you acquired since that time? How came you to acquire it? In what does it consist? Does it consist in money not yet paid?

Answer. It is in the part unpaid.

Question. In the \$2,300 cut off the original bill?

Answer. Yes, sir.

Question. How did you acquire that interest?

Answer. It was a private agreement between Mr. Fitzhugh and myself that I should have something for my trouble?

Question. What trouble?

Answer. For the part I took in the matter.

Question. What did he give you?

Answer. The whole of the unpaid balance.

Question. Has any effort been made to have it paid?

Answer. Yes, sir; Mr. Fitzhugh has been here frequently trying to induce a settlement.

Question. How late has he been here?

Answer. He came up here three or four weeks ago.

Question. And at that time had he himself any interest in that unpaid balance?

Answer. He came here at my suggestion; I got him to come here and help it along, as he was acquainted with all the facts of the case and every thing in connexion with it.

Question. How long after the allowance of the amount that was paid did he agree to give you the residue for your services?

Answer. Shortly afterwards; within a day or so.

Question. And from that time to this you considered it yours if you could get it?

Answer. Yes, sir.

Question. You have made no personal exertions to obtain it?

Answer. No, sir; but Mr. Fitzhugh did.

Question. Is Mr. Fitzhugh now in the employment of the House?

Answer. No, sir.

Question. How long since he left?

Answer. He has not been in the employment of this House since this Congress came in, except a day or two.

Question. It was Col. Carter who advised that letters be written disavowing these charges?

Answer. It was Mr. Bailey, the next clerk under Mr. Carter. He told me he was authorized to act in the matter. I will try to give his very language. Said he: "When I first came into this office I did not have much weight, but I have acquired an influence in the office now, and I think I can work the thing through for you."

Question. Mr. Bailey said that?

Answer. Yes, sir.

Question. Was that with regard to the payment of the amount allowed?

Answer. Yes, sir.

Question. That amount had not been paid up to that time?

Answer. No, sir.

Question. And he said the only way to get that bill paid as allowed was to withdraw those charges?

Answer. Yes, sir.

By the Chairman:

Question. Did they mention that Mr. Searing demanded the retraction of these charges, or were they only demanded by the office?

Answer. They did not mention Mr. Searing's name as desiring the charges to be withdrawn.

Question. Did they not state at the time these letters were signed that it was impossible for the clerk's office to pay bills of that kind with charges of this sort pending, and asked that they be withdrawn from against the clerk's office?

Answer. No, sir; they did not state that though they did set it forth in the letters.

By Mr. Cochrane:

Question. Were the original letters signed by you, or did you retain the originals and sign copies of them?

Answer. I have all the originals in my pocket; Colonel Carter's letter, and the two answers to it sent to us from the clerk's office; I drew up or made a copy of the one that was for me to sign, and Mr. Shirley made a copy of the other; I brought Mr. Shirley into the transaction because I wanted some witness to it.

By Mr. Winslow:

Question. Have you those letters here? If so, you will produce them.

Answer. I have three letters here marked "A," "B," and "C"; the first is the letter Colonel Carter addressed to Mr. Fitzhugh; the second is the letter Mr. Fitzhugh was to sign, and the third is the letter I was to sign.

"A."

OFFICE HOUSE OF REPRESENTATIVES U. S.

November 10, 1858.

SIR: Inferring from your conversation and from reports which have reached me in reference to statements alleged to have been made by Mr. Thomson in reference to the action of Mr. Searing, a member of the Committee of Accounts, that improper influences have been used in the passage of your account, I have suspended the payment of the same; my instructions from Mr. Allen, the Clerk of the House, are, to pay no accounts unless for services faithfully and honestly performed; and where doubt or suspicion exists to take counsel of the Committee on Accounts; such doubt and suspicion, I am free to admit, do exist in my mind, and unless entirely removed, I will be compelled to decline payment until I receive further orders from the committee.

Very respectfully,

JOHN F. CARTER,

Chief Clerk House of Representatives U. S.

J. W. FITZHUGH, Esq.

"B."

WASHINGTON, November 10, 1858.

SIR: Your note of this date has just been received and I hasten to reply to the same. You have entirely mistaken the purport of my last conversation with you, for I have no hesitation in stating, privately or publicly, that I know of no act, and have heard of no proposition, affecting Mr. Searing's character as a member of Congress and a high-minded honorable gentleman; and I may in this connexion add that my intercourse with Mr. Searing as well as yourself in regard to my account has left the most favorable impressions on my mind. In conclusion, I beg to call your attention to the enclosed letter from Mr. Thomson.

Very respectfully,

Col. JOHN F. CARTER,
Chief Clerk House of Representatives.

"C."

WASHINGTON, November 10, 1858.

DEAR SIR: I have made no statements and circulated no statements prejudicial to the character of Mr. Searing. I know of no act of his affecting his character as a gentleman of the strictest integrity, and as a member of the Committee on Accounts.

Very truly yours,

Mr. FITZHUGH.

By Mr. Cochrane:

Question. Is the statement in that last letter true?

Answer. No, sir; it was obtained under duress. I took legal advice about it before I signed it. We did it to enable Mr. Fitzhugh to get his money.

JNO. D. THOMSON.

No. 2.—JOHN W. FITZHUGH, WARRENTON, VIRGINIA.

FEBRUARY 22, 1859.

JOHN W. FITZHUGH called and examined.

By Mr. Cochrane:

Question. Where do you reside?

Answer. In Prince William county, Virginia, near Warrenton.

Question. What is your occupation?

Answer. I am a farmer now, sir. When I resided here I was a house-joiner.

Question. How long a time have you resided in Washington?

Answer. I left the city of Washington February 17, 1858. I had been here about 14 years.

H. Rep. Com. 186—2

By Mr. Whitely:

Question. Employed as a house carpenter?

Answer. Yes, sir. I served an apprenticeship of about a year at it, and afterwards I got to working for the departments: the Treasury Department and the different departments in the city, and in the Capitol. I did the furniture-making, upholstering, &c.; such work as was done for the buildings. I never did a great deal at house-joining.

By Mr. Cochrane:

Question. Did you have a contract with the Clerk of the House of Representatives for the general government for upholstering?

Answer. Yes, sir.

Question. State how you came to have that job with the Clerk. State everything you know of the transaction, from the commencement to the present day.

Answer. I was employed under General Cullom to do the general work about for the House—anything that should come up.

Question. In the line of your business or trade?

Answer. Yes, sir; upholstering, making boxes, chairs, or anything of that kind that they might want. Under General Cullom, and at the close of his administration, or just before it, the new hall was completed. General Cullom gave me an order for the new hall, and we had a very short time to do it. We had to work day and night, and Sundays.

Question. What was the work?

Answer. Carpeting the hall and the galleries, cushioning the seats in the galleries, and fitting it up. I employed a pretty large force, and pushed it through and got it down a few days after the meeting of Congress. The House met in the old hall, and afterwards adjourned to the new hall, when it was completed. I got the work done and made out the bill against the Clerk of the House at the end of the session.

Question. State whether the following is a copy of the bill which you rendered to the Clerk of the House of Representatives:

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

To J. W. FITZHUGH. DR.

For 1,169 yards Brussels carpet for new hall, at \$2.....	\$2,338 00
For cutting, fitting, and laying 1,169 yards carpet, at 25 cents.....	292 25
For 757½ yards Brussels carpeting for galleries, at \$2.....	1,515 00
For cutting, fitting, and laying 757½ yards carpet, at 25 cents.....	189 37
For 81 pieces carpet binding, at 50 cents.....	40 50
For binding 1,458 yards carpet, at 18¾ cents.....	273 38
For 11 lbs. carpet thread, at \$1 25.....	13 75
For 150 papers tacks, at 10 cents.....	15 00
For 100 yards felt carpet, at \$1 50.....	150 00
For laying 100 yards carpet, at 25 cents.....	25 00
For 1,573 feet cushions for gallery seats, at \$1 50.....	2,359 50
For 1,321 feet backs, upholstered, at \$1.....	1,321 00

For 28 yards best medallion carpet for Speaker's stand, at \$3.....	\$84 00
For cutting, fitting, and laying 28 yards carpet, at 25 cts.	7 00
	8,623 75

Answer. Yes, sir, that is it. About the time I got my bill made out they raised an investigation into General Cullom's affairs. I delayed my bill some time; until after I went before the committee. They examined me before the committee, and I thought it not worth while to present it until after I went before the committee. Then I went and presented my bill for payment to the Committee of Accounts of the present House.

Question. About what time did you present the bill?

Answer. I do not recollect exactly. I think it was some time in the spring of 1858; some two or three months, perhaps, after the meeting of Congress. The committee would take no action because the bill had not come regularly down from the Clerk. They told me it must come down in the regular way; so I took the bill to the Clerk, and he sent it down. The bill lay there some time, and the committee would take no action upon it. I called upon them and tried to know the difficulty. There seemed to be some opposition to my claim. They said I had charged too much, and they refused to pay. They would not act upon it. I went round and saw the members of the committee. I said that I had charged the government no more than they had always paid, and no more than I should charge a private individual. I went over to see the committee, from the House to the Capitol, and from the Capitol to the House. I was here upon expense, anxious to get the money; there were claims against me for materials furnished for this work, and they would take no action upon it. I begged them to pass the account; but they just acted when they pleased. They did not care, I suppose. Then, finally, they took up the bill and acted upon it. They referred the bill to a member of the committee; and I found out whom they referred the bill to, and I went to see him. It was Mr. Searing, of New York.

[At this point in the testimony an invitation was extended to Mr. Searing to be present during the examination, and Mr. Searing accepted the invitation.]

By Mr. Whitely:

Question. Was this contract made originally with you by General Cullom?

Answer. Yes, sir; I have his written order. The first interview I had with Mr. Searing was in the old hall of the House. I met him there. I was not acquainted with him; but I had business and introduced myself. I took a seat and talked the matter over. He tried to fight it off. He said he had understood that somebody else owned the bill. I told him no; that I was the owner of the bill; I had done the work; and I explained it to him. I pretty well satisfied him that it was all right, so far as that I was the owner of the bill. I had understood that Mr. Carter had fought the bill before the committee. I

saw Mr. Carter and talked to him, and explained it to him in the same way. He told me that he could say nothing further about it. He would say nothing further against the bill, and would say no more about it. I was very much in want of money; I was suffering for it; and I should like to have what was justly due me. Then, after the bill was referred to Mr. Searing, I went to Mr. Searing's room, on 14th street, and talked with him about the bill. He told me that there was no possible chance of the bill being passed at all; or if it was passed of their paying more than about half of it. I told him that I did not see why this committee of five persons should refuse to pay a mechanic for his labor; my notes were lying in the bank protested, which I had never had before in my life.

By Mr. Cochrane:

Question. Was that true? Were they laying in the bank protested?

Answer. Yes, sir; for a large sum of money, due for this material used in the hall. He told me he did not think they would pass it at all; or, if they did, they would not pay more than half of it. I tried to convince him that I had charged the government no more than was right, and upon those I left him and went away and stayed away a day or two. I went back and talked to him again two or three days afterwards, and asked him if he had done anything. Still he told me no. He was satisfied that the committee would not pay the bill. They were opposed to paying the bill, or, if they paid it at all, they were opposed to paying more than half of it. I said I could not and would not stand it. It would ruin me. I should have to break up at once and sell everything I had got. There were \$8,600 lying here; a right smart sum for a mechanic to have out.

Question. How much was it?

Answer. \$8,600 and odd dollars. I could not stand it. I went away again and stayed two or three days, and then went back and saw Mr. Searing again. He still talked in the same way. He then talked with me about the doorkeeper here being paid, and one thing and another, in different ways, and I still talked to him and explained the charges of the bill. I saw from the way he talked there was no possible chance for me to get the bill through at all, and I did not know what I was to do. My creditors were pushing me for money, and I did not know what to do. I advised with my friend, Mr. Thomson, and I told him the way Mr. Searing talked; that the bill never would be paid, or more than half of it, and I could never stand anything like that; that the charge was no more than what was right. I said to him that what was wanted was money to pass the bill. I did not know about that; but that was what I believed.

By the Chairman:

Question. You say that you suggested to Mr. Thomson that money was wanted to pass the bill.

Answer. Yes, sir.

Question. Had there been any intimation to you that money was wanted?

Answer. No, sir; I saw that from the action of the gentleman, that that would bring it, and nothing but that would bring it.

Question. Had any words to that effect passed?

Answer. From the general conversation between us, I could see that that was the main object. But I still did not make any further advance. I told Mr. Thomson that there was money wanted before I could get anything done from the committee. He said, you have got to lose any way ; you will never get it ; you had better take something than nothing. And then after I had seen that there was no possible chance of my getting my money at all, unless I did do it, I suggested to Mr. Searing that I would place \$400 in any bank in Washington to his credit if he would get it through. He said it was not worth while to do that ; I could give it to him.

By Mr. Cochrane.

Question. You suggested this first yourself?

Answer. Yes, sir ; after I had seen that there was no possible chance of getting the money unless I did do it. He took it directly and said : " Do that, and I will go to work for you." Those were the words he said. " I shall have to go to New York to investigate this thing to make the committee believe I have done my duty, and go before them and make a report so as to get the bill passed for you." Said he, " I will do all I can to get the bill passed."

Question. The whole of it?

Answer. The whole of it ; because I could not afford to take anything less than the whole bill. Some time after that the committee had a meeting, (they may have had two or three meetings,) and I went to Mr. Searing to see how he got on. He told me they had not reported upon the bill, or something to that effect. At the next meeting they passed the bill, cutting it down \$2,300, or something like that, allowing me \$6,325 upon \$8,625. I told him I could not stand it ; it was too bad. I talked to Mr. Kunkel about it. I saw him at the door of Willard's Hotel, and told him they were treating me too bad, and they had cut down the bill more than the profits ; that they had not allowed me as much for the carpet of the new hall as I had paid by six cents a yard. I told Mr. Kunkel that I should expect the balance to be paid, and I should present the bill to the committee. Then I went and saw Mr. Searing. He was in the hall, and I sent and got him to come out. He gave me the bill and demanded of me the \$400. I said I had not got the money. They had not paid my bill, and I could not pay it. He told me to go to the Clerk's office and ask them to pay it. I went to the Clerk's office, and they said they had no money and could not pay it. Then I went back to Mr. Searing and told him to go and see the Chairman of the Committee on Ways and Means, (Mr. Jones,) and ask an appropriation to pay this amount of money, and he said he would. Then I went home and calculated that, at the time they made the appropriation, I would come back again. I went home, and Congress adjourned without making the appropriation.

I staid at home a month or two, and came back and made a demand upon the Clerk of the House for the payment of the bill. He said there were no funds ; that there was no money to pay it with. I told him I thought it was very strange that they would not pay it when the committee had passed the account. I said that I thought that when the committee passed a bill it was the duty of the Clerk of the

House to pay it. He said they had no money to pay it with ; and I went home again. In the mean time my bond was lying in the bank for \$3,100 or \$3,200, and I went and deposited the bill in the bank for security for this amount of money, as I left the district ; and it lay there for a long time.

Some time in September or October, or somewhere along there, I came to town again. I came up to see the Clerk to see whether they were ready to pay the bill. They said "No ; they had no money to pay it with ; that there was a deficiency, and no money in the contingent fund any how." In a short time I came to town again, and heard that they wanted to see us at the Capitol. I came up with Mr. Thomson. The chief clerk wrote me a letter stating that there had been rumors or charges flying about against a member of the committee. I told them I did not know anything about that. Says he, "I will write you a letter, and state in it what we require you to do before we pay this money." They wrote us a letter, and we saw what the object was. They wished us to sign some papers, or they would not pay the bill. I took the papers and went out and showed them to my friends, and got counsel upon them.

By the Chairman :

Question. Is this [see document A in Thomson's deposition] his letter ?

Answer. Yes, sir ; this is the letter from Mr. Carter.

Question. What did you do when you received that letter ?

Answer. I showed it to Mr. Thomson, and told him they wished us to sign those papers, declaring that there was no truth in the charges against Mr. Searing ; but we wanted the money, and were suffering for the money. The letters did not amount to anything, and I had counsel that they were of no earthly account, and we were not under oath any how, and so I signed it and got a check for the money. I signed the letters for the money and nothing else.

Question. Whom did you consult ?

Answer. I went down and they asked Mr. Lee, the banker.

Question. Is he a lawyer ?

Answer. Yes, sir ; a lawyer and banker. He was an owner of a part of the bill, for it was security for the payment of a note of mine. They brought the bill up, and the Clerk gave us a check for the money, and I handed the check over to them, and they received the money.

By Mr. Cochrane :

Question. Did you pay any part of the money to Mr. Searing ?

Answer. No, sir ; I never paid him anything.

Question. Did he ever call upon you afterwards to pay him anything ?

Answer. No, sir ; only when he presented the bill to me, and I told him I had not the money and could not pay it.

Question. You say that, after the bill had passed the committee, you met him in the hall, and he handed you the bill and demanded the \$400. Now, what language did he use in making that demand ?

Answer. Now, says he, I want my \$400. I told him I had not the money until the bill was paid. Then, he said, I could have two checks made out, one for his part and one for me. I told him I would go to

the Clerk of the House and see about making out a separate check for him.

Question. Did anything more occur in that interview?

Answer. No, sir; that was all there was in that interview.

Question. Did you ask the Clerk to do that?

Answer. No, sir; because he refused to pay the money; and I did not calculate that he was going to pay that.

Question. Subsequent to this interview, did you and Mr. Searing have any further conversation with regard to this \$400 and this bill?

Answer. No, sir; I do not think any further conversation ever occurred about the \$400.

Question. Did you draw the full amount allowed by the committee?

Answer. Yes, sir; I drew the \$6,325.

Question. What connexion had Mr. Thomson with this bill?

Answer. He had no connexion with the bill at all, only as a friend of mine, and an adviser in the matter.

Question. Did he originally have any connexion with this contract?

Answer. No, sir; not with the bill.

Question. Did he have any connexion with the work?

Answer. No, sir; he never had any part in the bill at all. The bill was mine.

Question. You do not understand me. Did Mr. Thomson ever have the promise from General Cullom that he should have this job, or did he have any contract with General Cullom which he passed over to you?

Answer. No, sir; not that I know of. I received the order from General Cullom, and I have it somewhere among my papers, authorizing me to go on and fit up the hall. General Cullom, I think, was away all the time the work was going on.

Question. What did Mr. Searing, at any time in his interviews with you, say to you previous to the time this talk was first had about the \$400, that induced you to believe that he desired money?

Answer. There was so much talked about that it would be a hard matter for me to go over it and state it. I have forgotten what he said; but I could see from the gentleman's countenance that that was what he wanted. I could soon tell, from talking with any gentleman, what his object was.

Question. Did you judge rather from his countenance than from what was said?

Answer. Yes, sir; and from his actions.

Question. You alluded to something which had been said by Mr. Searing in regard to the doorkeeper's taking money. State that more definitely.

Answer. We were talking about the doorkeeper's taking money from the employés, and one thing led to another. He did not say much about it. I was talking about the people's exposing him one way or another.

Question. Who introduced that subject?

Answer. I do not recollect who introduced it; whether it was he or I.

Question. Did you draw any inference from that conversation?

Answer. I supposed from the general conversation that that was the main object, and I was satisfied of it all the time.

Question. Are you able to state any specific conversation you had which induced you to believe that was the main object or one object?

Answer. I cannot state any particular point or expression that led me to believe so. I judged so from the general conversation with the gentleman and from the actions of the gentleman. We were generally pretty private in talking. He generally took me into the back room to talk when any one was about. I was satisfied in my own mind that that was the only way I could get the bill passed.

Question. Why did you approach Mr. Searing any more than any other member of the committee upon the subject?

Answer. Because the account was referred to him, and I had never had any business with any other gentleman. I went to see him four or five times, and talked to him, and he led me to believe every time that I could not get the bill at all. I did not know what to do. I knew that was the only way I could get it.

Question. Did you furnish, under the contract, all the materials you have charged?

Answer. Yes, sir; I furnished them and paid for them.

By Mr. Winslow:

Question. Did you have anything to do with the work on the old hall, repairing the rooms, furnishing, &c.?

Answer. Yes, sir.

Question. In the last Congress, under General Cullom?

Answer. Yes, sir.

Question. How did you come to get that employment?

Answer. I got it from General Cullom.

Question. Who had it before you had it?

Answer. I do not know exactly who had it.

Question. You applied to General Cullom for it?

Answer. Yes, sir.

Question. Did you have any influence to support your application?

Answer. Yes, sir; I had influence.

Question. What influence, and who? Did you know General Cullom?

Answer. I did not know him until after he came here and became the Clerk of the House of Representatives and I was introduced to him. I had no acquaintance with him before that.

Question. Who did you get to apply to General Cullom?

Answer. I had a letter from General Wilson, Commissioner of the Land Office, a letter from Luke Lee, and several letters from other gentlemen; I do not now remember who they were exactly.

Question. Was there anybody about the House who aided you?

Answer. No, sir; I did not ask anybody in the House?

Question. Was there any one in the Clerk's office?

Answer. No, sir.

Question. You did not take the contract from anybody, but took it from General Cullom himself?

Answer. Yes, sir; General Cullom gave me that contract. Before that, when they had any work to be done, a man by the name of

Stewart was employed ; but he neglected the work, and General Cul-
lom took it away from him and gave it to me.

Question. Was not Mr. Thomson doing the work for General Cul-
lom at the time ?

Answer. No, sir ; he was employed as clerk. The work was given
to me. He could not do it any longer.

Question. Was Mr. Thomson at all interested in that matter ?

Answer. No, sir ; not in this bill.

Question. I am now speaking of the anterior upholstering,

Answer. Yes, sir ; he was interested then.

Question. To what extent ?

Answer. He was doing the work of upholstering.

Question. When you took the contract, did his interest cease ?

Answer. He had no interest in it then. He was holding an office,
and could not do both.

Question. You allude to the work for the new hall ?

Answer. Yes, sir.

Question. I understand you to say that this is a moderate bill ?

Answer. Yes, sir ; every dollar of it, and an honest bill ?

Question. And we have actually allowed you six cents a yard for
the carpet less than you paid for it ?

Answer. Yes, sir.

Question. Was Mr. Thomson at all interested in that bill ?

Answer. No, sir, not at all.

Question. Did he aid you very much in getting it passed ?

Answer. He helped me ; he has been my friend.

Question. What is his business ?

Answer. He is an upholsterer.

Question. Has he an establishment here ?

Answer. No, sir.

Question. Did he do any work ?

Answer. He did some little work.

Question. What are his circumstances ?

Answer. I do not know much about his circumstances at all.

Question. Has he any property ?

Answer. I do not know whether he is poor or whether he has
property. He may have money.

Question. You say that after your conversation with Mr. Searing,
when you judged from his manner that he wanted money, you went
and told Mr. Thomson, what did Mr. Thomson say ?

Answer. He said that it was a hard case that I should suffer in that
way. He thought that it was a hard case that I should have to do
this thing. I had heard it spread and rumored about town that Mr.
Searing was that kind of man, that he could be acted upon in that
way. That posted me up a little and gave me courage to do it.

Question. What did Mr. Thomson say when you told him what you
had inferred from Mr. Searing's manner ? State his language.

Answer. He said it is a hard case, but if you can do no better you
would better lose that than to lose it all.

Question. Then did you make the direct offer to Mr. Searing ?

Answer. Yes, sir ; I offered to deposit \$400 in some bank, but he said no, I could give him the money.

Question. What did he say then?

Answer. He said he would go to work for me.

Question. You afterwards had a conversation with Mr. Kunkel?

Answer. Yes, sir ; but not till after the bill had passed.

Question. Did you mention to Mr. Kunkel that this offer had been made?

Answer. No, sir.

Question. Did you state it to the Speaker or to any member of the House of Representatives?

Answer. No, sir.

Question. You did not tell anybody about it?

Answer. No, sir ; I did not tell anybody.

Question. Had you any experience in those matters which led you to believe that you could get the bill passed by paying money? Had you ever made such an offer to anybody before?

Answer. No, sir.

Question. Did you ever pay anything to an employé of the House to get a bill passed? Or did you ever offer to pay?

Answer. No, sir.

Question. I observe that in your examination you have always said "we" instead of "I?" To whom do you refer?

Answer. I meant myself individually. It was because Mr. Thomson was acting as my friend in the case and always advised me. I did not mean to be understood that he had any interest in the matter.

Question. Are your circumstances very good or very moderate?

Answer. My circumstances are very moderate.

Question. You could not afford to lose \$2,300, could you?

Answer. No, sir.

Question. Why did you transfer that to Mr. Thomson?

Answer. Mr. Thomson had no interest whatever in this bill, the \$6,300. The balance, \$2,300, I transferred to him. I did it because I never calculated to get it, and did not suppose it would ever be paid, and I said he might have that for his trouble.

Question. Did you consider that much of a compensation?

Answer. I should have considered it more compensation if I had expected it to be paid.

Question. When did you transfer that interest to him?

Answer. I do not know when it was.

Question. Can you tell us somewhere near the time?

Answer. I could not do it to save my life.

Question. Can you say whether it was before these letters were written?

Answer. Yes, sir, I think it was ; it was some time after the bill was passed.

Question. Was it before or after you got the money?

Answer. It was after that.

Question. Then it was after the letters were written?

Answer. Yes, sir.

Question. You were mistaken in saying it was before?

Answer. Yes, sir ; it was after that.

Question. I understood you to say that the letters were false ; that they were not true ?

Answer. No, sir, I did not say that.

Question. Do you say they are true ?

Answer. I say they were presented to me in that way.

Question. In your letter you disclaim ever making any such charges, and say that the charges were not true ; does that letter speak the truth or not ?

Answer. It speaks the truth.

Question. In that letter you say this : [reading the letter marked B.] Do you assert that that is true ?

Answer. Yes, sir, that is true.

Question. You really cannot understand me ?

Answer. I understood that that letter was produced for me to sign, and I signed it ; the rumor never got out through me ; I was satisfied that I had never put out any such rumors.

Question. You say that you knew of nothing affecting Mr. Searing's character as a member of Congress ; was that true ?

Answer. I did not know of anything affecting his character or anything else when the letter was presented to me ; I was satisfied that I had never said anything about the matter to anybody.

Question. That is not the point. I will read the letter again : [reading the letter.] Now, when you wrote that letter, did you state the truth or did you state a falsehood ?

Answer. I told the truth, I suppose ; the conversation between me and Mr. Searing I had never told to anybody.

By Mr. Cochrane :

Question. The letter does not say anything about your telling it.

Answer. I did not mean that I did not know in my own heart anything.

Question. At the time you wrote the letter you had previously had the conversation you have related here with regard to the passage of your bill ?

Answer. Yes, sir.

By Mr. Winslow :

Question. And you had heard these rumors in the city which you have spoken of ?

Answer. Yes, sir ; that was a long time before those letters were written that I heard he was that kind of a man.

By Mr. Eustis :

Question. At the time you signed that letter, you had already had with Mr. Searing the conversation you have related here ?

Answer. Yes, sir, all that had transpired then.

Question. Then you believed what you stated to be false at the time you stated it ?

Answer. No, sir ; my object in signing the letter was to get the money.

By Mr. Cochrane :

Question. Do you think that Mr. Searing's statement to you that

he would aid you in the passage of your bill for \$400 did not affect his character as a member of Congress?

Answer. I suppose it did.

Question. How came you to state that it did not?

Answer. Because I wanted to get the money. I was suffering for the money. People were pushing me for it. I was willing to do anything to get my money. That was all I wanted. I made every appeal to the gentlemen that a man could make, and they cared nothing about that. They did not take any interest in the matter at all.

By Mr. Winslow:

Question. Did you suppose that Mr. Searing took an interest in getting your bill passed?

Answer. After that conversation I supposed he did.

Question. And after that you refused to pay him the money, and went about telling people about it?

Answer. I never told anybody about it, except Mr. Thomson.

By the Chairman:

Question. Did you tell Mr. Shirley?

Answer. He was present. He knew all about the circumstances. He was present at the time these letters were fixed up.

By Mr. Cochrane:

Question. Was there any one present at the time of your interview with Mr. Searing when he made the offer to get through your bill?

Answer. No, sir; there was no one present.

Question. Was no one ever present at any interview between you and Mr. Searing?

Answer. No, sir; no one was present that I know of.

By the Chairman:

Question. At what time was the money paid to you in the Clerk's office?

Answer. I do not know exactly at what time it was.

Question. Was it done by check?

Answer. Yes, sir; the check was given to Suter & Lea's clerk.

Question. You drew the money, paid up the bonds and notes, and held the balance?

Answer. Yes, sir.

Question. You never had a conversation after that time with Mr. Searing, in which you presented money, or a check or note to him?

Answer. No, sir.

Question. You never considered that you was under any obligation, in accordance with your previous arrangement, to see him again?

Answer. I did not care how often I saw him.

Question. You never meant to pay it?

Answer. No, sir; I never meant to pay it, because I had got my money at the time. The bill was passed.

Question. You immediately assigned all the balance of the claim, to the amount of \$2,375, to Mr. Thomson, divesting yourself of all interest in it?

Answer. Yes, sir.

Question. And he holds it now?

Answer. The claim belongs to him. I told him he could hold it.

I intended to try and get it if I could. I said I should dun the committee for it.

Question. When was your last interview with the committee?

Answer. About two weeks ago.

Question. Have you made any effort to have that bill passed?

Answer. Yes, sir.

Question. With whom have you made the effort?

Answer. With the committee.

Question. What gentlemen? Was Mr. Searing there?

Answer. Yes, sir.

Question. Did you state before the committee, at that time, anything with reference to your engagements with Mr. Searing, and the understanding that he was to aid in passing your bill?

Answer. No, sir.

Question. How often have you made an effort to get the balance of that bill allowed?

Answer. Once or twice I think I went before the committee to try to get the balance allowed. The last time was about three weeks ago.

Question. Can you state of your own knowledge what efforts Mr. Thomson has made besides the efforts you have made?

Answer. He has never made any.

Question. Have you still assumed before the committee the ostensible ownership of the balance of the claim?

Answer. Yes, sir.

Question. Did you state to the Committee on Accounts that you had assigned it.

Answer. No, sir; I never mentioned it.

Question. You prosecuted it as though it was coming to you?

Answer. Yes, sir.

Question. Although Mr. Thomson was holding the transfer?

Answer. Yes, sir.

Question. At the time you understood that this bill was referred to Mr. Searing, did not you understand that it was equally referred to Mr. Dick, of Pennsylvania, who was to make the examination equally with Mr. Searing?

Answer. I understood once that the bill was referred to Mr. Dick, and I went to see him once or twice; but he always fought me off. He said the bill was too high, and he, for one, was opposed to paying it. I went to see him two or three times, and I never could get him to do anything at all. He suggested, I think, that there should be arbitration. Said I, that is all I want. I ask nothing in the world but what is just and fair from anybody, from the government, or from a private individual. I came up to see Mr. Carter, and told him what General Dick had suggested. Mr. Carter said it was a very good idea. Said he, we will select two men to investigate the matter. Said I, you can select both of your own kind, if you please; I don't care who they are; take any good, responsible, fair men. But he proposed that he should select one, and I should select one. I agreed to it; and he selected one, and I selected one, and I took the two before Mr. Carter in the Clerk's office; and I said, here are the two

gentlemen to examine this work, and if there is anything wrong about it they will make a deduction.

By Mr. Winslow:

Question. When you found a difficulty in getting your bill paid by the Clerk, in consequence of these reports affecting Mr. Searing, did Mr. Carter say anything to you about those rumors?

Answer. No, sir.

Question. How came you to have that correspondence with Mr. Carter?

Answer. Mr. Bailey suggested it; he said something about it.

Question. Who spoke first about it, Mr. Bailey to you, or you to him?

Answer. Mr. Bailey spoke of it first to Mr. Thomson, I think; and then Mr. Thomson either wrote to me and told me what was on the carpet, or told me to come up and see them.

Question. Whom did you see, Mr. Bailey or Carter?

Answer. Mr. Bailey.

Question. What conversation did you have with Mr. Bailey?

Answer. We talked the matter over. He said that certain rumors had got out. He had told Mr. Thomson, and Mr. Thomson had told me, that these rumors had got out, and he said they would not pay the bill while there was any trouble about the money.

Question. Did you have any conversation with Mr. Carter?

Answer. No, sir; not with Mr. Carter. Mr. Bailey was the man we saw.

By Mr. Cochrane:

Question. In what part of the passage was it that Mr. Searing handed you this bill as passed, and demanded the \$400?

Answer. It would be a pretty hard matter for me to tell. I was running from one end of the house to the other about this. I think it was at the east door of the new hall I sent for him to come out.

Question. Was anybody there at the time?

Answer. I think Mr. Thomson was somewhere near, in the passage, and within sight of us.

Question. Was Mr. Shirley in sight?

Answer. I do not know. He might have been.

Question. Have you, since the commencement of this session of Congress, called upon Mr. Searing at his rooms with reference to this balance?

Answer. Yes, sir.

Question. When?

Answer. I was at his room once or twice.

Question. With reference to this balance?

Answer. Yes, sir.

Question. Were you and he alone?

Answer. Yes, sir.

Question. Did he say anything to you about the \$400?

Answer. No, sir.

Question. Was there anything that passed between you and Mr. Searing, at this interview, with reference to that \$400?

Answer. No, sir.

Question. He demanded nothing?

Answer. No, sir.

Question. You offered nothing?

Answer. No, sir.

Question. The matter was not alluded to?

Answer. No, sir.

Question. You went there to get his influence in passing the balance of this bill?

Answer. Yes, sir.

Question. You say that Mr. Searing was to have \$400. Did that relate to his efforts to secure the passage of the whole bill?

Answer. He was to get all he could. He said he did not know whether he could get the whole, or only a part. He was to get all he could.

Question. Did you express satisfaction, or dissatisfaction when he returned the bill?

Answer. I told him I could not stand it. If this Congress would not pay it, another would. I transferred the matter to Mr. Thomson.

Question. If you thought it so just that you told him that if this Congress would not pay it another would, how came you to transfer the balance so speedily to Mr. Thomson?

Answer. Because I still thought it was a doubtful case, although I expressed myself always that the bill was just, and I did not see how they could refuse to pay me. After they had refused and declared they would not pay me, at the last interview with the committee I begged them to pay me, and explained everything as well as I could. They said they had acted upon the bill once, and considered that final. Said I, I don't consider it final, if you do. You never have allowed me what was right. All that I want you to pay me is what is right—what you pay to the gentleman employed under you now. I will never consent to any such reduction. Mr. Dick said he had never seen that gentleman's bills?

By the Chairman:

Question. Do you say that this entire bill is just?

Answer. Yes, sir.

Question. Did you make the agreement to pay Mr. Searing the \$400 for as much as he could get for you?

Answer. No, sir; I never put that to it at all.

Question. You say that you agreed to pay Mr. Searing \$400, and that you afterwards made the assignment absolutely to Thomson of \$2,300, without consideration, excepting that he rendered to you some service in procuring the passage of the bill. If the bill was just originally, how could you afford to stand that abatement?

Answer. I do not suppose I should ever have got anything for it but for him.

Question. How extensive were your contracts with the 35th Congress? How much did they amount to in the aggregate, for your bills for boxes and everything of that kind?

Answer. It would be hard for me to state.

Question. Was you paid in the aggregate sufficient to enable you to stand anything of this kind?

Answer. I did not depend upon the profits of the House ; I had an income besides that to support my family with. I suppose the amount might be \$8,000 or \$10,000 besides this bill.

Question. Did you know that the committee had an investigation made by any other one besides Mr. Searing, before they allowed you even this \$6,000 ?

Answer. I did not know whether they had or not.

Question. Was not that fact brought to your attention by General Spinner, or by some other member ?

Answer. Mr. Dick said they had examined the hall and thought I had charged too much.

Question. Did not he say that they had inquired at wholesale establishments the prices of the articles you furnished ?

Answer. Yes, sir, he said he had inquired at wholesale establishments the price of the materials. He said he had looked into the matter thoroughly and found I had charged them too much.

By Mr. Cochrane :

Question. At the time that you called upon Mr. Searing, during the present session of Congress, at his lodgings, with reference to this balance, what did he say upon the subject ?

Answer. He never had much to say about it, although he always talked as though he would befriend me and try to get the balance of the account through.

Question. Did he say he would call the committee together, if you desired it, to consider the bill ?

Answer. Yes, sir, he said he would call the committee together on a certain day, and I could go before them. He did so and I went before the committee.

Question. Was this offer of \$400, or this agreement in regard to that amount which you made with Mr. Searing, was it made in contemplation of the allowing of your whole bill ?

Answer. I calculated so.

Question. Just tell the committee all that was said.

Answer. Mr. Searing said that he did not know whether he could get the whole amount or not. I told him that I could not take less than the whole bill, because I had not charged more than was right, and I could not stand any shave upon the bill. He said he would do the best that he could.

Question. Was that before or after you had offered \$400 ?

Answer. It was after that ; I saw that there was no chance before that, because he always tried to make me believe that the committee never would pay the bill at all. He said the committee was not in favor of paying more than half of it, if they paid any at all.

By Mr. Whiteley :

Question. How long after you offered this \$400 was the bill allowed ?

Answer. They might have had it three or four weeks.

Question. How many days in each week did they meet ?

Answer. They did not meet very often ; may be once a week ; perhaps once in two weeks.

Question. How long do you think that it was between the time that you made this arrangement about the \$400 and the time that Mr.

Searing brought the bill to you and said they had allowed you the \$6,325?

Answer. It might have been a week, or two weeks, or a month.

FEBRUARY 23.

JOHN W. FITZHUGH recalled at his own request.

By the Chairman:

Question. At the time the interview occurred between yourself and Mr. Bailey when those letters were prepared and signed, please to state which of you sought that interview; how it came about; whether you or Mr. Bailey originated it?

Answer. I first heard of it from Mr. Thomson, and I came up to the Capitol.

Question. First heard of what?

Answer. There had been some rumors about that they wanted us to sign some letters clearing Mr. Searing from certain charges or rumors that had got out; I told him I had not put out any rumors or anything of the kind.

By Mr. Eustis:

Question. Where did Mr. Bailey speak to you?

Answer. In the office at the door; he said they would write a letter stating what they required us to do, and proposed that we should remain about there; in the course of fifteen or twenty minutes I received a letter in the new hall; I read the contents of the letter, and showed it to Mr. Thomson.

By Mr. Cochrane:

Question. Who introduced the conversation, yourself or Mr. Bailey?

Answer. Mr. Bailey; I said nothing about it and knew nothing about it until he spoke to me; all I wanted was the money.

Question. Mr. Bailey introduced it to you?

Answer. Yes, sir.

Question. Mr. Thomson informed you that they desired to see you with regard to signing some retractions?

Answer. Yes, sir; about these rumors; he thought there was a possible chance of getting the money, and I would better come up and see him, or something to that effect.

By Mr. Eustis:

Question. Please to state what degree of relationship subsists between Mr. Thomson and yourself?

Answer. I have known him a long time.

Question. Are you connected or related to Mr. Thomson?

Answer. No, sir.

Question. Is he your brother-in-law?

Answer. No, sir; he is no relation to me in the world.

Question. Neither by marriage nor otherwise?

Answer. No, sir.

By the Chairman:

Question. Had you any conversation with any one in the Clerk's office prior to the time these letters were sent in reference to your claim and these charges against Mr. Searing?

Answer. No, sir.

Question. No conversation with any one in the Clerk's office?

Answer. Not to my recollection.

Question. Do you wish to make any further statement?

Answer. No, sir; I have no more to state, I believe.

J. W. FITZHUGH.

No. 3.—CHARLES B. SHIRLEY, WASHINGTON.

FEBRUARY 22, 1859.

CHARLES B. SHIRLEY called and examined.

By the Chairman :

Question. Are you aware of the nature of the charges under investigation by this committee?

Answer. Yes, sir; I am aware of them.

Question. State what you know in reference to these charges?

Answer. I would ask if I am desired to speak of what I have heard about them, or only to tell what I know of my own knowledge.

Question. It would be better for you to confine your remarks to what you know personally, and what occurred between any person involved in these charges and any member of the Committee on Accounts?

Answer. I do not know anything about the matter, of my own knowledge; all that I know is from what I have heard.

By Mr. Eustis :

Question. Have you had any conversation with Mr. Searing in relation to this matter?

Answer. Yes, sir; I had some conversation with Mr. Searing a few nights ago.

By the Chairman :

Question. Are you acquainted with the character of the bill of Mr. Fitzhugh?

Answer. I know that they had a bill before the Committee on Accounts.

Question. Did you ever hear any conversation between Mr. Fitzhugh and Mr. Searing, or any other member of the Committee on Accounts, before the bill was allowed?

Answer. No, sir; not a word.

Question. Have you heard any since it was allowed?

Answer. No, sir.

Question. Have you had any conversation yourself with Mr. Searing, or any other member of that committee, since the bill was allowed?

Answer. Yes, sir.

Question. When was that, and what was the conversation?

Answer. While in conversation with Mr. Searing the other night I told him what the report was in relation to this matter, not that I knew anything about it of my own knowledge.

By Mr. Eustis :

Question. What did Mr. Searing say to that?

Answer. He said that a man must be a big fool to pay another for cutting his bill down.

Question. Was that all he said?

Answer. That was all ; he did not admit that the charge was true or false.

By Mr. Cochrane :

Question. Then he did not speak of the truth or the falsity of the charge at all ?

Answer. No, sir ; he merely said that a man must be a fool to pay another to cut his bill down.

Question. Are you in the Clerk's office ?

Answer. No, sir.

Question. You are under the Clerk ?

Answer. No, sir.

Question. In what department are you ?

Answer. I was appointed, under resolution of the 34th Congress, a messenger in charge of committee rooms.

Question. Are you still acting in that capacity ?

Answer. The resolution has never been repealed.

Question. Do you know anything about any letters being got up and Thomson and Fitzhugh procured to sign them ?

Answer. I saw the letters.

Question. Do you know anything about how they originated ?

Answer. I know that the letters originated in the Clerk's office.

Question. Do you know whether Mr. Searing was ever consulted in any way in reference to the getting up of those letters and their being signed ?

Answer. No, sir.

By Mr. Eustis :

Question. What part did you take in getting up those letters ?

Answer. None in the world. It was on the 10th of November—I recollect the time—that Mr. Thomson and Mr. Fitzhugh and Mr. Bailey, down stairs, and Mr. Carter, were all talking together. But as it was a matter in which I was not interested at all, I did not listen to their conversation, but left them talking and went off down stairs. After a little while Mr. Fitzhugh came down out of the Clerk's office with those letters in his hand, and asked me to read them. I did read them, and he finally asked me to copy one for him, which I did.

Question. Then you have taken no part whatever in getting up these letters ?

Answer. No, sir.

Question. And you were not a party to the transaction in any way ?

Answer. No, sir.

By Mr. Cochrane :

Question. Did they state any objection at the time to signing the letters ?

Answer. Mr. Fitzhugh did.

Question. What did he say ?

Answer. He objected to signing his letter ; said the language was very strong, and that if he signed that letter it would make him out a liar, or something to that effect ; but that they compelled him to sign the letters, or take them away and copy them, in order to get his six thousand dollars ; and he said he could not get his money until the letters were signed.

Question. He gave that as a reason why he felt constrained to sign the letters?

Answer. Yes, sir.

Question. Did he at first object to sign the letters upon the ground that they were too strong?

Answer. He hesitated a long time before he did it.

Question. Do I understand you to say that you were never present at any interview between Mr. Fitzhugh and Mr. Searing?

Answer. No, sir; I never heard a word pass between them upon this subject at all. All that I know about the transaction I got from them.

By the Chairman:

Question. Do you mean from Mr. Fitzhugh and Mr. Thomson, in the absence of any member of the Committee on Accounts?

Answer. Yes, sir.

Question. Then, of your own knowledge, all that you know is what took place at the time these letters were signed?

Answer. Yes, sir; Mr. Fitzhugh asked me to copy a letter for him, and I did so.

By Mr. Cochrane:

Question. Was Mr. Searing here in this city, to your knowledge, after the adjournment in June last, during the recess at any time?

Answer. I did not see him myself.

Question. Do you know whether he was here or not?

Answer. I did not see him, but I heard that he was here.

Question. About the time the letters were signed?

Answer. It was before that time; the letters were signed on the 10th of November; I copied one of them myself.

Question. Do you know whether there was any communication between the Clerk's office and Mr. Searing in relation to these letters?

Answer. No, sir; all I know about the letters is this: I left Mr. Thomson and Mr. Fitzhugh one evening with Mr. Bailey and Mr. Carter; when I went up stairs again I saw Mr. Fitzhugh coming out of the Clerk's office with these letters in his hand; he asked me to go down stairs in one of the rooms, and while I was down there he asked me to copy one of them, and I did so.

Question. Do you know anything further in relation to this matter?

Answer. Only from what I have heard.

[The witness was recalled after some other testimony had been taken.]

By Mr. Cochrane:

Question. Have you stated the whole of the conversation that you had with Mr. Searing a few nights ago?

Answer. No, sir; I thought of some of the words, which, at the time I testified before, I had forgotten.

Question. Go on now, and state the whole of it.

Answer. I told Mr. Searing that Mr. Fitzhugh and Mr. Thomson were clamorous about their bill, and wanted me to bring the matter out.

By Mr. Eustis:

Question. What do you mean by "bringing the matter out?"

Answer. To expose it. I told Mr. Searing that it was a matter that I did not wish and did not intend to have anything to do with, if I could help it; and then Mr. Searing said that he did not see why I or anybody else should want to injure him. I told him that I did not; that I had no desire and no intention to do so. I think I told him that he had the bill, or the bill was with him or before the committee, or something of that sort, and that if these men did not get it acted upon they would make an expose of it. Mr. Searing said that that would not do any good, for then they would not get the money, and might defeat it for all time.

By the Chairman:

Question. Was this conversation in reference to the balance of the bill unpaid?

Answer. Yes, sir.

Question. Did you speak to Mr. Searing at the request of these men?

Answer. Yes, sir; they asked me to name it to him, and I did so.

Question. In the conversation in which they asked you to name it to Mr. Searing, did they make use of the declaration that they would expose the affair if the balance of the bill was not allowed?

Answer. Yes, sir.

By Mr. Eustis:

Question. You are positive that Mr. Fitzhugh also joined in that declaration?

Answer. Yes, sir; I think he did.

By Mr. Cochrane:

Question. Have you now given the whole of the conversation with Mr. Searing—all that he said, &c.?

Answer. Yes, sir; that is all that I recollect now, only I had no desire to be mixed up in this matter at all.

[This witness was again recalled.]

By Mr. Winslow:

Question. When was it that Mr. Thomson and Mr. Fitzhugh first communicated to you these charges against Mr. Searing?

Answer. It was some time about the first of May last year.

Question. State what they said to you about it.

Answer. Mr. Fitzhugh stated to me that he had his bill before the Committee on Accounts, and in order to get Mr. Searing to act upon his bill he had to agree to pay him \$400.

Question. Did he say that Mr. Searing consented to take it?

Answer. He said that such an agreement was entered into.

Question. Did you ever hear him say that more than once?

Answer. Yes, sir.

Question. Did you ever hear Thomson say anything about it, whether he was aware of it or not?

Answer. Yes, sir.

Question. Did you ever hear him say whether he ever advised Fitzhugh for it or against it?

Answer. I do not think he ever said that he advised him about it; he merely said the same thing that Fitzhugh said.

Question. Did Thomson ever say anything to you about any of his

conversations with Fitzhugh, after Fitzhugh had said what he did about Searing?

Answer. I do not recollect of his saying anything about his advising him to give the money, or anything of that kind.

By the Chairman:

Question. After this man communicated this thing to you, did you communicate it to anybody else?

Answer. No, sir, not to give it publicity.

Question. Did you never speak of it?

Answer. I spoke of it to one or two persons.

Question. Did you speak about it to any member of the House with whom you are acquainted?

Answer. Yes, sir; I think I told Mr. Tompkins that such was the report.

Question. When did you tell him that?

Answer. Some time during last summer.

CHS. B. SHIRLEY.

No. 4.—JAMES C. ALLEN, CLERK OF THE HOUSE OF REPRESENTATIVES.

FEBRUARY 22, 1859.

JAMES C. ALLEN called and examined.

By the Chairman:

Question. What is your official position?

Answer. I am Clerk of the House of Representatives.

Question. State to the committee what took place in your office, if you have any knowledge of it, in reference to the obtaining the signatures of Mr. Thomson and Mr. Fitzhugh to certain letters which bore upon the payment of Mr. Fitzhugh's bill, as allowed by the Committee on Accounts?

Answer. I do not know anything about the letters or the signatures to them. I was not in the city at the time those letters bear date. All I know in reference to the matter is what I have learned from other parties connected with it. I was written to in relation to the payment of the account some two weeks, probably three weeks, before the account was paid.

Question. Who addressed you a letter in reference to that account?

Answer. Colonel Carter, my chief clerk.

Question. Have you that letter or a copy of it?

Answer. I have not; I kept no copy of it.

Question. Do you remember its contents substantially?

Answer. My recollection about it now is this: That he wrote in his letter that Mr. Fitzhugh was still pressing upon the office the payment of his claim. The difficulty had been whether we would have enough in the contingent fund, or in the furniture and repair fund, to pay our own contracts and to pay that claim besides. I wrote back to him that if, upon examination, they supposed that they would have money enough left over to pay that before the meeting of Congress, then to pay it. My letter had reference to conversations that we had had upon the same subject after the passage of this account

and during the remaining portion of that session of Congress. I will explain to the committee why it was that this account had not been paid. When I sent in my estimates to the Committee of Ways and Means, at the commencement of the last session, for legislative expenses here, in making up those estimates I did not take into account this bill of Fitzhugh, for the reason that Fitzhugh had told me that he was working under Captain Meigs, and I supposed that Captain Meigs would pay him out of his own fund. After Fitzhugh had presented his account to the Committee on Accounts, and they had allowed him this sum of \$6,000 or so, I then told him that I had made no estimate for the payment of his claim, not supposing that my office would be called upon to pay it. I told him that if he wanted to get his money he had better go to the chairman of the Committee of Ways and Means and ask for an appropriation for his claim, as I had estimated only for such expenses as I expected to incur myself. I had a letter drawn up, addressed to the Committee of Ways and Means, asking for that appropriation, and I told Fitzhugh that he must go and press the matter in person upon Mr. Jones, the chairman of the committee, if he wanted his bill paid. The letter was sent to the Committee of Ways and Means, and an estimate was sent to them, but no appropriation was made. Congress adjourned without any appropriation being made for this account. I told Mr. Fitzhugh afterwards that we would not pay that bill unless we became satisfied that we had funds enough to pay it as well as to pay our own contracts; the matter was postponed in that condition. When I was here, in the city, in September, Colonel Carter told me that he had not paid the bill because some of our own bills had not come in yet, and he did not know how the funds would last, and he did not wish to let our own creditors lie over on account of the money being used for this bill. I then went home again. Some time before the date of these letters I received a letter from Colonel Carter in reference to the business of the office, and, among other things, he mentioned this Fitzhugh claim, which was still being pressed for payment. In my reply to him I told him that if, upon examination of the balance in the treasury due to us, there was enough to pay this Fitzhugh allowance, then to pay it; if not, then not to do it. I heard nothing more in reference to the matter until I came on here a few days previous to the meeting of this session of Congress, when Colonel Carter told me what had taken place; showed me the copies of the letters written, and gave his explanation and reasons for doing so.

Question. Have you any knowledge as to who the real party in interest was in this Fitzhugh claim?

Answer. I can only state what I know: When I came into office I was advised by some who had been under the employ of Mr. Cullom that Mr. Thomson was the upholsterer. I wrote him a note to stop the upholstering, and at the same time I wrote him a note dismissing him from office; this note I sent by Mr. Bates, I think it was, or some one about the office, to Mr. Thomson; whoever it was, he came back and said that Mr. Thomson said I had dismissed the wrong man, for, although doing the work, he was not the upholsterer. I asked then

who the upholsterer could be; I found that Mr. Fitzhugh was at work at it also. I wrote a note to Mr. Fitzhugh, desiring him to stop the work; in half an hour afterwards, probably in less time, Fitzhugh came into my office and remarked to me, "You are mistaken; I am not doing this work under Mr. Cullom; I am doing it under Captain Meigs, and therefore I am not accountable to you for it." I said, "Very well, I will address a note to Captain Meigs about the matter," which I did immediately; then the work stopped, and I heard nothing more about the matter until I was informed that Fitzhugh had presented his bill to the Committee on Accounts for allowance. Then it was that I instructed my chief clerk to state to the committee what had occurred between me and Mr. Fitzhugh at the commencement of Congress. My impression was, that the Clerk's office was not liable for this work, as it had been done under Captain Meigs; but the Committee on Accounts, after examining the claim and considering it, concluded to pass it, and, as I have before stated, the reason that it was not paid was that there was no estimate for it.

Question. For what particular work was this bill rendered?

Answer. For the carpets on the floor of the new hall; for the upholstery and trimming about the doors and windows; for the cushioning and trimming the galleries.

Question. Was this the work he was engaged upon at the time that you dismissed him?

Answer. I think that the very day I gave Thomson and Fitzhugh notice, they were at work fixing up the upholstering and trimming about the doors; putting the baize on, I think.

By Mr. Eustis:

Question. Did you see Thomson at work there?

Answer. My impression is that, I saw a man there who was Mr. Thomson. I did not know him at the time, but I was told that it was Mr. Thomson.

Question. Was he engaged in the upholstering work about the hall?

Answer. Yes, sir; they seemed to be engaged about that. They were putting up the trimmings about the doors.

Question. Was there any cause other than that you have stated—the deficiency of your appropriation—for suspending this bill so long after it was allowed?

Answer. No, sir; the bill would have been paid as soon as it was presented if I had had the funds to pay it.

Question. The payment was suspended under your instructions, was it?

Answer. Yes, sir.

Question. And you made no estimate for it?

Answer. No, sir; I supposed, from what Fitzhugh told me, that Captain Meigs was bossing the job, and that he would pay it out of his funds. After the committee had passed it, Captain Meigs requested that I would pay it.

By Mr. Whiteley:

Question. Do you know why these persons were applied to to sign these letters?

Answer. I do not know, of my own knowledge.

By the Chairman :

Question. In the correspondence between Colonel Carter and yourself, did he make any allusion to the charges against Mr. Searing?

Answer. No, sir, he did not ; and up to that time I suppose he had not heard of them.

Question. To what time do you refer now?

Answer. To September, when I was here.

By Mr. Cochrane :

Question. When did you first hear of the charges?

Answer. When I returned to this city, about the 20th of November.

Question. Do you know whether the fact of the existence of these charges had been communicated from the Clerk to Mr. Searing before you came on?

Answer. I do not know.

Question. Was he informed of them before these letters were signed?

Answer. I do not know.

Question. Have you any knowledge, from your subordinates in the Clerk's office, that there had been any communication between them and Mr. Searing before these letters were signed?

Answer. No, sir, I have not.

Question. Then, so far as you know, these letters were got up upon the motion of the clerks in the office?

Answer. Yes, sir.

By Mr. Winslow :

Question. Do you know of any fact, or of any conduct upon the part of Mr. Searing tending to implicate him in any way?

Answer. I do not. And I will say that, so far as Mr. Searing is concerned, and so far as all the rest of the members of that committee are concerned, they can bear witness that I have always shown a great deal of anxiety to have all my accounts come out square.

By Mr. Eustis :

Question. Were you *ex officio* in attendance upon that committee?

Answer. No, sir ; but my chief clerk was.

[This witness was subsequently recalled.]

By Mr. Eustis :

Question. Did you state, when you were testifying before, at what time you communicated these rumors to the Speaker of the House of Representatives.

Answer. I was not asked that question.

Question. Then I will ask the question now.

Answer. It was either on the very day or on the day before the announcement of the Committee on Accounts.

By Mr. Whiteley :

Question. Do you mean the announcement of the committees this session?

Answer. Yes, sir ; it was either the very day or the day before the announcement of the committees ; I will not be certain which. It was after I had understood that the Speaker made up the Committee on Accounts.

Question. Before it was announced?

Answer. Yes, sir ; it was before it was announced, I know.

By the Chairman :

Question. State, if you can, the precise terms in which you made these rumors known to the Speaker.

Answer. I went into his room, and I asked him, I think, if he had determined upon the constitution of the Committee on Accounts? He told me that he had. I then asked him who he was going to make chairman of that committee. He told me Mr. Searing; and I think he then asked me if there was any objection to that arrangement. In reply to that question, I think I told him that I knew of no objection except those rumors which had been put in circulation against him. I said I did not know anything about the truth of them; if they were true, I thought it was a bad arrangement.

Question. Did you inform the Speaker of the fact that there were written retractions in your office of those charges?

Answer. Yes, sir, I informed him of that, and of what I had understood to have been reasons for obtaining those retractions.

By Mr. Cochrane :

Question. Was anything else said about the matter? Was there any discussion as to whether he would reconsider his determination?

Answer. No, sir; he seemed to have made up his mind to the appointment.

Question. Was there ever any suspicion directed against any other member of the committee until the communication in one of the Baltimore papers of yesterday, or the day before, which says that another member of this Committee on Accounts was implicated in this same transaction?

Answer. Prior to that newspaper article I never heard any suspicion against any other member of that committee.

By the Chairman :

Question. Neither in the nature of a charge, rumor, nor otherwise?

Answer. No, sir.

[Colonel Carter, who was present during the latter portion of this deposition, corroborated the statement of the witness, so far as it set forth that the Speaker was informed of these rumors before the announcement of the committees at the commencement of this session.]

J. C. ALLEN.

No. 5.—JOHN F. CARTER, CLERK'S OFFICE, HOUSE OF REPRESENTATIVES.

FEBRUARY 22, 1859.

JOHN F. CARTER called and examined.

By the Chairman :

Question. Certain papers have been submitted to the committee by Mr. Thomson and Mr. Fitzhugh. Will you be kind enough to explain to the committee in what way, and for what reason these papers—letters they purport to be—were got up? Here is one under date of November 10, 1858, purporting to have been written by you to Mr.

Fitzhugh. What was the nature of the transaction in which these letters were written?

Answer. I shall have to go back a little in order to explain the matter fully. When Mr. Allen came into office he understood, and we all understood, that Mr. Thomson was the upholsterer for Mr. Cullom. We also found his name upon the pay-roll as one of the clerks of the office. Mr. Allen dismissed him by letter. The answer was brought back that he was not the upholsterer, and, therefore, he could not be dismissed from that place. Mr. Allen was then told that Mr. Fitzhugh was probably acting as upholsterer. Mr. Fitzhugh was then dismissed. He came back and said that he was not the upholsterer. Who is the upholsterer, asked Mr. Allen? If any one is, said Fitzhugh, it is Mr. Thomson. Then, said Mr. Allen, what are you doing here? He said, I have work to do here for Captain Meigs. I told Mr. Allen then that these men were doing some work here; that some day they would want their money, and then they would show their hands. We went on and made up our estimates for the furniture and repairs of the hall of the House, the committee rooms, and offices, submitted that estimate to the Committee of Ways and Means, and Congress subsequently passed the necessary appropriation. Things went on in this way until Mr. Fitzhugh brought in his bill for upholstery of the hall and the galleries, amounting, as you see here, in round numbers to very nearly \$9,000, and wanted payment for it. I reminded him at the time that he said he was working for Captain Meigs. He said I had misunderstood him; that he had said nothing of the kind. The original bill was not made out in Mr. Fitzhugh's handwriting, but it was in that of Mr. Thomson's, although Mr. Fitzhugh pretended to be the owner of the bill. Mr. Fitzhugh was told that he must go before the Committee on Accounts, and he did so. I am *ex officio* clerk of that committee, and am pretty well aware of all that transpires in that committee. The bill was referred to Mr. Searing and to Mr. Dick for examination. In the course of their examination they called upon me to go with them and examine the upholstery in the galleries; I did so, with them, and we found that, although it had been in use only a few weeks, in many places the hair was coming out of the cushions. The work was done in a slovenly manner, as if they only cared to have it last until the money was paid. Mr. Dick's explanation, and I believe Mr. Searing used equally plain English, was, that it was a perfect swindle all around, and they would never consent to such a bill as that. The matter went on from day to day, until Mr. Dick concluded that, in order not to do injustice to the man, he would go on to New York, and inquire in some upholstery establishments there, and see what such work could be done for, and what would be a fair price for this. He did go on there, and when he came back here he brought on with him a specimen of a cushion which was better than those in our hall, and which, I think, would have cost fifty per cent. less; at all events, it was a very large reduction. The matter was canvassed over, and, after a great deal of explanation and talking, Mr. Dick and Mr. Searing reported in favor of passing the bill with a reduction of $33\frac{1}{3}$ per cent. In the meantime, knowing that some provision must be made for the pay-

ment of this bill, and that we had no means of paying it, a note was sent to Mr. Jones, the chairman of the Committee of Ways and Means, stating that we had made no estimate for this bill. I saw Mr. Jones subsequently about the matter, and talked it over with him, but Congress adjourned without any appropriation having been made for the payment of that bill. During the first part of the recess, Mr. Fitzhugh called upon us, and said that it was a very hard case that the bill had been cut down so; and said that he was suffering in consequence of our not paying it, and that we ought to pay it. I told him that it was his own fault that no estimate had been made for it. I told him that I felt for his necessities, and if toward the end of the year our appropriation should be found to hold out enough to pay his bill, I would pay it, even if it should be a little inconvenient for us to do so. So the matter ended there. He came in the month of October or November, and asked how our balance was—how the fund held out. I told him that we could not pay his bill without a great deal of inconvenience; but still I was disposed to pay it, even if we should have to go before the House and ask for a deficiency. In the course of his conversation he let some remarks drop affecting Mr. Searing's character—not direct charges, but insinuations, and as I thought at the time for the purpose of frightening the office into paying his bill in order to protect the reputation of the members of the Committee on Accounts. I so regarded it, at all events, and spoke up very promptly and said: "I will not pay you your bill now; my instructions are to that effect. I do not care whether Mr. Searing or any other member of the Committee on Accounts has been guilty of such conduct, I will expose them; go away now, for I will not pay you." Before going he told me emphatically that I had misunderstood him; that he had said nothing derogatory to Mr. Searing. My reply to that was, that I understood the English language, and that my hearing was unimpaired. He then walked off. In a little while afterwards he called upon one of the clerks in the office, Mr. Bailey, and said to him that I had misunderstood him, and that he regretted that I had gone off in such a passion, and that he was willing to make some explanation of the matter. Mr. Bailey came to me and spoke to me upon the subject. I told him that there could have been no misunderstanding what was said; that he did say that. I said that if I should pay that man then, he would go off out of the office and say that he had never retracted those remarks; and, said I, I will not pay him until he makes a full retraction. Mr. Bailey said, What will you do about it? I said, I will write him a letter and he can make a written retraction in reply; and I think that that day or a few days subsequent I did write this letter here, [referring to one in possession of the committee,] and I sent it to Mr. Fitzhugh by a person in the office. In about two hours after I sent him that letter these answers were received. Mr. Fitzhugh came forward, and seemed very much pleased that the matter was settled so amicably.

By Mr. Whiteley:

Question. Did you draw up the answers to these letters?

Answer. No, sir.

By the Chairman :

Question. Do you know whether any one in your office drew up these answers ?

Answer. I know from Mr. Baily this much : that after I had sent this letter to Mr. Fitzhugh, he called on Mr. Bailey and showed it to him, and asked him to write a reply to it for him, as he could not himself prepare one. If I understood Mr. Bailey rightly, he said that he was a little pressed with work at the time, and rather not do it. They urged him several times to write an answer to this letter, embodying their views; and finally he said he would do it after he got through with his work. About an hour afterwards they came to him and he drew up an answer, which they said they were not satisfied with in some particulars. He told them they could take it away with them and alter it, which they did, and these answers were returned.

By Mr. Eustis :

Question. Have you had any conversation with Mr. Searing about this matter ?

Answer. The only conversation I have had with him about it was during this session.

Question. I mean previous to the signing of these letters ?

Answer. No, sir.

By Mr. Cochrane :

Question. You do not know, then, that Mr. Searing was in any way consulted in regard to these letters ?

Answer. No, sir ; he was not in the city then ; to my own positive knowledge there was nothing said or done with him about the matter.

By Mr. Eustis :

Question. Was your letter based upon any interview or any conversation with Mr. Searing ?

Answer. My letter was prepared without the slightest reference to Mr. Searing, and solely for the protection of our own office.

By Mr. Cochrane :

Question. Were you present at any meetings of the committee in which this claim of Mr. Fitzhugh was discussed ?

Answer. Yes, sir.

Question. Were you present after it was referred to Mr. Searing and to Mr. Dick ?

Answer. Yes, sir ; I was present at nearly all the meetings of the Committee on Accounts, and was present with Mr. Searing and Mr. Dick when they were consulting about this matter.

Question. What part did Mr. Searing take in those discussions ? Did he favor the bill, or did he speak in favor of reducing the amount of it ?

Answer. He generally spoke of the whole work as a swindle upon the government.

Question. After it was referred to himself and to Mr. Dick ?

Answer. Yes, sir.

Question. Did you at any time observe any change in the conduct or conversation of Mr. Searing in reference to this bill ?

Answer. No, sir.

By Mr. Eustis :

Question. Are you *ex-officio* clerk of the Committee on Accounts?

Answer. Yes, sir.

By Mr. Cochrane :

Question. Did you see anything at any time in the conduct of Mr. Searing, or notice anything in his remarks that indicated that he had had any improper influences brought to bear upon him?

Answer. No, sir.

By the Chairman :

Question. At the time the bill was actually passed by the committee, and this reduction was made, did Mr. Searing make any remark as to the sufficiency or insufficiency of the amount allowed?

Answer. My impression is this: that Mr. Searing and Mr. Dick both said that, even with this reduction, as the work was so imperfectly performed, they would make a large profit and no injustice would be done them.

By Mr. Cochrane :

Question. Did you know either of those two men, Fitzhugh and Thomson, before you came here to Washington?

Answer. I do not know Mr. Thomson now by sight; Mr. Fitzhugh I do know.

Question. Have you known him long?

Answer. Only since this matter of his bill came up.

Question. Do you know his character?

Answer. Only from hearsay. I have heard Mr. Fitzhugh favorably spoken of, and Thomson unfavorably spoken of. When I say I have heard Fitzhugh favorably spoken of, I mean in this way: although he was spoken of as bad, Thomson was spoken of as worse; so I considered Fitzhugh a degree better than Thomson.

By Mr. Searing :

Question. Were you present when the bill was passed?

Answer. I believe so.

Question. Do you recollect anything about an addition of ten per cent. being allowed to the sum reported by Mr. Dick and myself?

Answer. I understood that that amount in addition was allowed, but that the proposition to allow it came from another member of the committee.

Question. From whom did it come?

Answer. To the best of my recollection it was Mr. Spinner who proposed it, in order that the claimants should be satisfied; in a liberal spirit he proposed to add ten per cent.

By Mr. Cochrane :

Question. How did Mr. Dick and Mr. Searing vote on that proposition?

Answer. I believe the vote was unanimous.

Question. Was that proposition accepted?

Answer. Yes, sir.

By Mr. Winslow :

Question. When did you communicate to Mr. Searing these rumors about this matter?

Answer. Since he arrived here at this session.

Question. Did you communicate it to anybody else?

Answer. I communicated it to Mr. Allen, as a matter of course.

Question. Did you communicate it to any member of the House? Did you communicate it to the Speaker?

Answer. I communicated it to all the members of the Committee on Accounts. I do not think I communicated it to any other members of the House; I may have done so, but to the best of my recollection I do not think that I did.

Question. Have you had any conversation with the Speaker about it?

Answer. Yes, sir.

Question. When?

Answer. Since this investigation was ordered. I told him the facts as I have told them here to-day.

Question. Several applications were made to you for the money, I suppose, after the bill was passed?

Answer. Yes, sir.

By Mr. Kunkel:

Question. Did you communicate this matter to the Speaker at the first part of this session?

Answer. Yes, sir, I did the rumor, but not the specific statements.

By Mr. Winslow:

Question. You communicated it to the Committee on Accounts?

Answer. Yes, sir; I communicated the precise case to the Committee on Accounts, but I communicated merely the rumors to the Speaker.

Question. You stated that you could not pay this bill because you had made no estimate for it?

Answer. No, sir.

Question. There was no money to pay it?

Answer. No, sir.

Question. Was there any officer in the Clerk's office who was particularly active to get this bill paid to Mr. Fitzhugh?

Answer. No, sir.

Question. Do you know whether Mr. Bailey made any extraordinary exertions to get this money?

Answer. No, sir.

Question. Was there anything in any conversation you had with Mr. Bailey that led you to suppose that he had any undue anxiety about it?

Answer. No, sir. I spoke to him about it in the early part of the session—he is our book-keeper—and said that if our balance would hold out I should like to have that account settled. He agreed with me that towards the end of the year we could tell better about it. When I last consulted him about it he said he thought we had better pay it, even if it was an inconvenience; that it was a bill of long standing, and we might as well dispose of it and get it out of the way; if there was a deficiency the House would supply it. He spoke in favor of the bill being paid, but he took no extraordinary exertions about it.

Question. When was that?

Answer. It was before the correspondence with Mr. Fitzhugh?

Question. Where is Mr. Bailey from?

Answer. From Maine.

Question. How long has he been in that place?

Answer. Eight or ten years.

By the Chairman:

Question. Have you known Mr. Baily to assume any undue influence in obtaining the payment of claims in your office?

Answer. No, sir; he seems to be an exceedingly amiable, quiet, unobtrusive gentleman. He seldom speaks except when he is spoken to, and is very attentive to business.

Question. Has he ever manifested any interest in the payment of claims?

Answer. No, sir, not more than other clerks. He has never attempted to influence me or Mr. Allen, that I am aware of.

By Mr. Winslow:

Question. It is in testimony that Mr. Bailey said: "When I first came into the office I did not have much weight, but I have acquired an influence in the office now, and I think I can work the thing through for you." Do you know whether he claims or possesses such an influence as is there represented?

Answer. No, sir; so far as I know he is a very quiet, amiable, and modest man. He may have said that, but it does not sound like him.

Question. Do you know of anything in his conduct in this matter that seemed to you improper?

Answer. Mr. Bailey, after I sent the note, subsequently explained it to Mr. Fitzhugh. After an hour or so they called and asked him to write an answer, not being qualified, I suppose, by their education, to write a proper answer. He declined. They urged him to write an answer; he still declined, but finally he acceded to their request, and said if they would wait until he had finished what he had on hand, which would take about an hour, he would do so. He wrote the letters, and they looked at them, but they did not quite come up to their ideas, and they wanted to make some alterations. They took them away, and he said he had never seen them since.

Question. Did Mr. Fitzhugh ever admit to you that he had offered Mr. Searing \$400?

Answer. The moment I spoke of it he said I had misunderstood him, and denied pointedly that he had ever said anything of the kind.

JNO. F. CARTER.

No. 6.—JOHN BAILEY, CLERK'S OFFICE, HOUSE OF REPRESENTATIVES.

FEBRUARY 22, 1859.

JOHN BAILEY called and examined.

By Mr. Cochrane:

Question. Are you a clerk in the office of the Clerk of the House?

Answer. I am.

Question. In what capacity do you act?

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Answer. I keep the books and accounts of the clerks, and the payments made.

Question. What connexion had you with these letters, (those embraced in Thomson's deposition,) and what is the transaction to which they relate.

Answer. I draughted this letter (marked B) at the request of Mr. Fitzhugh. This is my handwriting. He copied it.

Question. State what took place in the interview at which this request originated; where it occurred; when; and the circumstances?

Answer. I met Mr. Thomson upon the Avenue, and he stated to me that his account remained unpaid, and that he wanted the money very much indeed; that Mr. Fitzhugh had assigned the account to him.

Question. Was that before it was paid?

Answer. Yes, sir. He wanted the money very much indeed, and had agreed to pay Mr. Searing a sum of money to approve the account; that he was very much pressed for money, and wanted to be paid. I told him I would speak to Mr. Carter about it. When I went to the office I asked Mr. Carter if there was any reason why the account should not be paid. I told him what had occurred in the interview I had with Mr. Thomson. He, Mr. Carter, stated that Mr. Fitzhugh had said to him that he had agreed to pay Mr. Searing, and that he, Mr. Carter, had told Mr. Fitzhugh that he would have nothing to do with it before the subject was investigated. That was Mr. Carter's answer to me; that he would not pay any account under such circumstances. Afterwards, I met Mr. Thomson again, and told him what Mr. Carter had said to me. He said that he wanted his money very much indeed; that he would like to have the account paid; he should try and collect it some way or other. That is about all that took place at that time. Subsequently, Mr. Fitzhugh made his appearance at the Clerk's office, and said that he had made no such statement to Mr. Carter; that Mr. Carter had misunderstood him. I spoke to Mr. Carter about it, and he said he would receive no verbal statement upon that subject from any one. If there was any denial made, it must be made in writing. He said he would address Mr. Fitzhugh a letter, and if he chose to answer it he might do so. He wrote the letter to Mr. Fitzhugh, which was delivered to him by some one connected with the office; I do not recollect whether it was myself or one of the messengers. Mr. Fitzhugh sent for me, and I met him in the hall of the House with Mr. Thomson, and said he wanted me to assist them in draughting an answer to the letter. He said they did not know exactly how to reply to it. I told them I was very busy; that I would rather that they should call upon some friend to assist them—some other person than myself. I had a great deal to do that day. They insisted that I should aid them to answer the letter. I told them to give me one hour, and I would endeavor to assist them. They said they would. I prepared the form and handed it to them. I have never seen it since until I saw it here. I do not know whether they furnished Mr. Carter a copy of the letter or not. I never made any comparison with it.

Question. Did they hesitate in regard to making this retraction in writing?

Answer. No, sir ; not in my presence.

Question. Did they give any reason, in your presence, why they were disposed to sign such a writing?

Answer. I do not recollect that they did.

Question. Did they find any fault with the language of the statement which you had prepared as being too strong, or otherwise, to your knowledge?

Answer. One of them remarked that he did not know whether it was all right or not. I told him he would better consult some friend about it. I did not know exactly myself what they wanted, and if this did not answer, they might alter it and fix it to suit themselves ; I had nothing to do with that.

Question. Did they state that they would sign anything to get the money, or anything to that effect?

Answer. No, sir ; I have stated the substance of all the conversation which took place relative to the matter, as near as I can recollect.

Question. Did you state to Thomson, or to either of them, at any time, that when you first came into the office you had not much influence, but had acquired an influence, and could aid them, or words to that effect?

Answer. No, sir ; I never made a statement of that kind to any one.

Question. You never said anything substantially equivalent to it?

Answer. No, sir.

Question. Had you known either of these gentlemen before your connexion with this bill?

Answer. Yes, sir ; Thomson and Fitzhugh had both been employed about the Capitol ; Thomson was a clerk under General Cullom ; he was an upholsterer at another time to furnish materials, &c.

Question. Had you known Fitzhugh long?

Answer. No, sir ; I never knew either of them previous to the 34th Congress.

Question. Do you know the general character of either of them?

Answer. No, sir, I do not.

Question. Was Mr. Searing at all consulted, to your knowledge, by the Clerk's office, in reference to the preparation of these answers?

Answer. No, sir.

Question. Had he any knowledge, so far as you know, that such a statement had been required by the Clerk before paying the bill?

Answer. No, sir ; he could not have had any.

By the Chairman :

Question. Why did Carter insist upon these letters if Searing knew nothing about them.

Answer. I do not know that I can answer that question myself.

Question. Did he assign any reason for it?

Answer. He spoke as though he had a want of confidence in the person he was dealing with.

Question. Why should Mr. Carter require an answer in writing? What interest was it to him?

Answer. I do not know what interest he had in it.

Question. Did he give any reason for it?

Answer. No, sir, he did not.

Question. How did the question of these accounts come up between you and Mr. Thomson? Which mentioned the subject first?

Answer. Mr. Thomson.

Question. Did you ever speak to him about his accounts before he spoke to you?

Answer. No, sir.

Question. Did you ever say, in any conversation, that the account was just and ought to be paid?

Answer. No, sir; on the contrary Thomson and Fitzhugh both admitted that the work was not well done. They said they had not time to do it well. They admitted that the account ought to be reduced some, but not to the extent to which the committee reduced it.

Question. They admitted that there ought to be a reduction in the account to some extent?

Answer. Yes, sir,

Question. Did you ever, in the street, or anywhere outside the office, commence a conversation with these men in reference to this account?

Answer. No, sir.

Question. Did you ever proffer your services to them to aid in having the account paid?

Answer. Never to any person, there or at any other time.

By Mr. Winslow:

Question. Mr. Thomson has testified before the committee as follows:

"In November last, Mr. Bailey, one of the clerks in the office, sent for me. I came up here and sent in word to him by a gentleman that I would meet him outside. He came out to see me and approached me in this way—this I give of my own knowledge now—said he, 'Mr. Thomson, did Fitzhugh ever get his money for that bill?' I told him that he knew very well that he did not get it, as he was in the Clerk's office. He talked a little more, and then he said: 'Well, between you and I, he ought to have got that money; it ought to have been paid to him long ago.' And he went on to say: 'If you will take my advice you can put him in the way of getting the money.' I told him that Fitzhugh wanted the money very badly, &c." Is that statement true?

Answer. That statement is not true.

Question. Mr. Thomson testifies further:

"There was a great deal of complaint about the committee having cut off this amount, and we were very indignant about it. Mr. Bailey pledged himself and the Clerk's office to get that balance passed as soon as Congress met, and the Committee on Accounts held a meeting and had got to work. He said that that balance which had been cut off had been cut off unjustly; that Mr. Fitzhugh was entitled to it, and that they would use their influence to get it paid; he pledged himself to obtain that balance for Mr. Fitzhugh.

"Question. Was that pledge, or whatever you call it, made to you before you signed these letters?

"Answer. Yes, sir; that was a part of the inducement to sign the letter." Is that statement true?

Answer. That is not true. All the conversation I had with them about that balance was this: He stated to me that there should have been a reduction in the bill; he admitted that, but not to the extent that the committee had made it. I told him that if he would take the accounts and satisfy them that they had made too great a reduction, I had no doubt they would make the matter right.

Question. Did you pledge yourself to obtain that balance for Mr. Fitzhugh, and was that an inducement to them to sign the letters?

Answer. Never; never.

By Mr. Cochrane:

Question. Did you hold out any inducement?

Answer. No, sir; never.

Question. Of any kind?

Answer. No, sir.

By Mr. Winslow:

Question. Mr. Thomson also testifies that you used this language: "When I first came into this office I did not have much weight, but I have acquired an influence in the office now, and I think I can work the thing through for you." Did you say that?

Answer. There is no truth in it, sir; I never admitted to any person that I had one particle of influence in the Clerk's office.

By Mr. Cochrane:

Question. Do you reside in Washington?

Answer. Yes, sir; I have been here nearly nine years; I came from the State of Maine nine years ago, and I have been in the Clerk's office ever since.

By Mr. Winslow:

Question. Do you know any fact or circumstance tending to implicate Mr. Searing?

Answer. I do not.

Question. Or any other member of the Committee on Accounts?

Answer. No, sir; I do not.

Question. Did you ever hear any charges made against any member of the Committee on Accounts on this subject?

Answer. No, sir.

JOHN BAILEY.

No. 8.—JOHN DICK, HOUSE OF REPRESENTATIVES.

FEBRUARY 22, 1859.

JOHN DICK called and examined.

By the Chairman:

Question. Are you a member of the Committee on Accounts of this House?

Answer. Yes, sir.

Question. Did you ever see this bill before? (Showing witness what purports to be an account of T. W. Fitzhugh against the House of Representatives, for \$8,625.)

Answer. I have seen a bill similar to this. I do not think this is the identical bill.

Question. This is a certified copy of the original bill; have you ever seen a bill embracing these items?

Answer. Yes, sir; I think I have.

Question. What was the action of the Committee on Accounts on this bill?

Answer. When this bill came before the Committee on Accounts, I think it was objected to by myself, and probably Mr. Searing, on account of the charges being so high. After some examination, it was referred to Mr. Searing and myself to investigate; we made a very careful examination of it, and reported upon it. I was satisfied in my own mind, that the bill was very exorbitant. Still I took the trouble to go to New York to investigate and examine the material, and to inquire about upholstering and the prices for doing such work as this. On my return, in consultation with Mr. Searing, we agreed to recommend the committee to pass the bill at a reduction of 33 $\frac{1}{3}$ per cent., which, I believe, was agreed to by the committee, although no definite action was had at the time, I think. At a subsequent period, during my absence, Mr. Spinner, as I was informed, proposed a further allowance to the claimant of 10 per cent., and in that way the bill was passed.

By Mr. Cochrane:

Question. With that 10 per cent. additional?

Answer. Yes, sir; at least, I was so informed. That would make the reduction upon the bill 23 per cent. This met my approval and received my sanction. Afterwards Mr. Fitzhugh came before the committee and urged his claim, giving a good many reasons for it; such as the expense of material, &c. But after my investigation of the matter very fully, I was perfectly satisfied that I was correct in my judgment in the first instance. I therefore refused, so far as I was concerned, to hear any further discussion upon the subject, and recommended to the committee to let it remain as it was.

By the Chairman:

Question. Then you and Mr. Searing examined the bill together?

Answer. Yes, sir.

Question. What was Mr. Searing's conduct during the course of your examination; and did he assent with yourself to the reduction?

Answer. He did without any hesitation, and gave it as his opinion, that the reduction was not any too much.

Question. After the bill was passed by the Committee on Accounts, did he appear to be satisfied with the adjustment of it that was made?

Answer. I never heard him make any objection to it.

By Mr. Cochrane:

Question. How long before the bill finally passed the committee did you and Mr. Searing have it under consideration?

Answer. I suppose it must have been a month or more.

Question. You had several interviews in relation to it?

Answer. Yes, sir ; we examined the furniture and the work, and we were both satisfied in regard to the matter, and our conclusions were about the same.

Question. Did you notice anything in the conduct or the conversation of Mr. Searing in reference to this bill that indicated that he favored it in any way?

Answer. No, sir ; nothing.

Question. Or anything that indicated that any improper influences had been brought to bear upon him?

Answer. I saw nothing but the strictest propriety, as a member of the committee, upon his part.

By the Chairman :

Question. Did you make an examination of the work done?

Answer. Yes, sir.

Question. How did you find it?

Answer. In our opinion it was of a very inferior character, and the prices for it were very exorbitant.

By Mr. Cochrane :

Question. Do you know whether Thomson had any interest in this bill?

Answer. I do not know anything about any interest that he had. Mr. Fitzhugh always claimed that he was the party in interest.

By Mr. Searing :

Question. Have you stated that we reviewed our action this winter?

Answer. Yes, sir ; I stated that, on a subsequent occasion, Mr. Fitzhugh urged the matter, and we declined to have anything more to do with it.

By Mr. Cochrane :

Question. Did Mr. Fitzhugh take any part in the subsequent action of the committee?

Answer. He came before the committee and pressed the matter, and urged us to reconsider our decision of the matter and allow him the amount of his bill. Mr. Searing, as well as myself and the other gentlemen of the committee, agreed at once—or, at least, Mr. Searing and I both recommended—that the bill as we had acted upon it before should be considered as correct.

By the Chairman :

Question. How often at this session has Mr. Fitzhugh been before the Committee on Accounts?

Answer. Twice, I think.

Question. What was his object?

Answer. It was with a view to get us to allow him more upon his bill.

Question. Did he assume the ownership of the balance of the account when he was before the committee?

Answer. I so understood it.

Question. While before your committee at any time, or aside from your formal meetings, did Mr. Fitzhugh ever intimate to you or any other member of the Committee on Accounts, anything about his having offered money to Mr. Searing to pass his bill?

Answer. Not that I know of.

Question. Did he say anything in the meetings of the committee this session about any assignment of the unpaid balance of his claim?

Answer. I never heard anything of it.

By Mr. Cochrane:

Question. Did Mr. Fitzhugh ever intimate anything to you about allowing you money in any way?

Answer. No, sir ; never.

JOHN DICK.

No. 9.—A. J. LARNER, WASHINGTON.

FEBRUARY 22, 1859.

A. J. LARNER called and examined :

By the Chairman :

Question. Do you know anything about this account of Mr. Fitzhugh for work done in the new hall of the House of Representatives?

Answer. I know nothing of the account.

Question. Were you ever present at any conversation between Mr. Bailey, a clerk in the Clerk's office, and Mr. Fitzhugh or Mr. Thomson in reference to this account of Mr. Fitzhugh?

Answer. I was not present at any interview between Mr. Bailey and Mr. Thomson. I recollect of going into the Clerk's office, and Mr. Bailey asked me what had become of Mr. Thomson, that he had not seen him for a long while, or that he had not seen him for some time. I told him I had seen Thomson a few minutes before in the old hall. Said he, "Tell him I should like to see him." I was up here, at that time, looking for a document, the report of Mr. Cobb upon the collection of the revenue. As I was going after that I told Mr. Thomson that Bailey wanted to see him. We walked along the passage until we got near the Clerk's office, when Thomson said "I am not going into that damned hole where Carter is," or "where that damned Carter is," or something to that effect. I went in and told Bailey that Thomson was in the passage. "Very well," said he, "I will see him in a few moments." I went on to the document room to get the document I was looking for. When I got back Thomson and Bailey were in the south passage, in the second recess, talking very earnestly, and they talked there some fifteen or twenty minutes. After they got through Thomson told me the subject of the conversation, and I advised him not to be a party to it.

By Mr. Eustis :

Question. Did you hear any of that conversation?

Answer. No, sir.

Question. Then all you know of it is through Mr. Thomson?

Answer. Yes, sir.

By Mr. Cochrane :

Question. When was that?

Answer. I cannot recollect the exact time ; it was some five or six days before the New York elections.

By Mr. Whiteley :

Question. Do you know whether Mr. Thomson had seen Mr. Bailey before that day at all?

Answer. I do not. I should suppose, however, that he had not; for when Mr. Bailey asked me if I had seen Thomson, or where he was, he said he had not seen him for a long time, or for some time, and wanted to see him. I told him that he was about the Capitol. I did not know what his object was, but after the conversation Mr. Thomson told me the purport of it.

By Mr. Cochrane :

Question. Do you know anything further about this matter?

Answer. No, sir.

By the Chairman :

Question. Was that the only time that Mr. Bailey ever desired you to see Mr. Thomson for him?

Answer. That was the only time?

Question. Did he express any motive for seeing him?

Answer. No, sir.

Question. Did he express any particular anxiety to see him?

Answer. He said he wanted to see him, when I told him that Mr. Thomson was in the old hall, he said "tell him I want to see him," and when I told him that he was out in the passage, he said "I will be out to see him in a few moments." As I came back from the document-room, I saw them standing in the second recess, in the south passage, talking very earnestly, and I think Mr. Bailey had his hand on Mr. Thomson's shoulder.

Question. Have you any knowledge of any improper conduct upon the part of Mr. Searing as a member of the Committee on Accounts.

Answer. Only from hearsay.

Question. Have you in reference to any other member of that committee?

Answer. No, sir; what Mr. Thomson told me was the purport of the conversation between him and Mr. Bailey.

Question. Have you stated all you know in regard to this transaction?

Answer. Yes, sir; I have.

A. J. LARNER.

No. 10.—PAULUS POWELL, HOUSE OF REPRESENTATIVES.

FEBRUARY 22, 1859.

PAULUS POWELL called and examined.

By Mr. Cochrane :

Question. Are you a member of the Committee on Accounts?

Answer. Yes, sir.

Question. Have you any recollection of a bill for some \$8,000 and over, presented by a Mr. Fitzhugh?

Answer. Yes, sir; I have a recollection of it.

Question. When the bill came before the committee, what action did they take upon it?

Answer. According to my recollection of it, the bill was referred to General Dick and Mr. Searing. They had frequently mentioned the subject to the committee, or to individual members of the committee, and my impression is, that they both agreed that the bill was a very high one. They finally reported that if the bill was reduced thirty-three per cent., it would then be about a fair rate. The committee, I think, adopted that report; that is my impression.

By Mr. Eustis:

Question. Do you remember what Mr. Searing's bearing and conduct in committee were while this bill was being discussed?

Answer. I saw nothing particular in his conduct.

Question. Nothing in his conduct to excite suspicion?

Answer. Nothing in the world.

Question. Anything at all to show that he was favoring the bill?

Answer. I think he was decidedly for a reduction of the bill, as were all the members of the committee.

By Mr. Searing:

Question. Will you state to the committee what conversation passed between you and Mr. Fitzhugh?

Answer. Mr. Fitzhugh afterwards met me on the street, hailed me, and stopped me, and complained very much that his account had been reduced to his great injury.

By Mr. Cochrane:

Question. Was that after the bill had been passed?

Answer. Yes, sir; he said he had lost money, and wanted the matter opened again. I told him that the committee did not think he had been cut off too much, but if he would convince them that he had been aggrieved, so far as they could correct it, I had no doubt they would do so; but that they did not think so. At any rate, I said, they would give him a hearing. He came back this session and asked to be allowed to come before the committee, and we gave him that permission. He gave us no new information, however, and I saw no indication upon the part of any of the committee to give him any more. The first reduction of his bill, I think, was 33 per cent.; then, I think, that action was reconsidered, probably a few days afterwards, and some 10 per cent. was added again, making the reduction upon the original bill but 23 per cent.

By the Chairman:

Question. Did Mr. Fitzhugh, in any conversation with you, ever intimate that any member of the Committee on Accounts had been guilty of improper conduct in regard to his claim?

Answer. No, sir; he made not the slightest intimation of the kind.

Question. Did he ever speak in committee in reference to any undue influence being exerted upon Mr. Searing?

Answer. No, sir.

Question. Nor upon any of the members of the committee?

Answer. No, sir.

PAULUS POWELL.

No. 7.—WM. F. RUSSELL, HOUSE OF REPRESENTATIVES.

FEBRUARY 22, 1859.

WM. F. RUSSELL called and examined.

By the Chairman :

Question, Were you present at any conversations held between Mr. Searing, your colleague, and Mr. Fitzhugh, in reference to a bill of his pending before the Committee on Accounts, at any time?

Answer. Yes, sir ; but I did not know Mr. Fitzhugh personally. I saw a man, whom Mr. Searingsaid was a Mr. Fitzhugh, at my rooms on Fourteenth street, on two or three occasions ; and that he came to see him in reference to a bill or claim he (Fitzhugh) had before the Committee on Accounts, for furnishing or trimming about the hall of the House of Representatives, for carpeting, upholstering, &c. Very little was said by either Mr. Searing or Mr. Fitzhugh in my presence on the subject. Mr. Fitzhugh spoke in general terms of his bill. He seemed very desirous to have the Committee on Accounts audit it.

By Mr. Searing :

Question. Do you recollect what I said at the time about the bill?

Answer. All that was said at the time by you was, that the bill would go before the Committee on Accounts, and they would act upon it, and whatever that action might be, of course Mr. Fitzhugh must abide by their decision. Subsequently to that time I heard rumors and gossip in various localities and on several occasions in regard to this matter.

By the Chairman :

Question. You say that you were present at conversations between Mr. Searing and Mr. Fitzhugh in regard to the bill?

Answer. Yes, sir ; he came to our room on Fourteenth street some two or three times. I would find him there when I would come in from my meals, and Mr. Searing told me who he was.

Question. What was the character of the conversation which you heard between them?

Answer. All that passed between them when I was there was that he was very anxious to have the bill audited. Mr. Searing told him that it must be done by the committee.

Question. Did you ever hear any intimation or any proposal of a consideration for passing the bill?

Answer. No, sir.

Question. Did you notice any manifestations between them at any time ; any conversation between them that looked to such a thing?

Answer. No, sir. I inferred from what passed between them that Mr. Searing refused to act upon the bill except in committee ; in fact, Mr. Searing so told me on several occasions.

By Mr. Cochrane :

Question. Was very much said about the matter there?

Answer. No, sir. Mr. Fitzhugh left each time very soon after I came in. What passed between them prior to my coming in I know nothing about. Mr. Searing and myself roomed together on 14th street.

WM. F. RUSSELL.

No. 11.—JAMES W. SIMONTON, NEW YORK.

FEBRUARY 23, 1859.

JAMES W. SIMONTON, called and examined.

By the Chairman:

Question. Were you the author of the article in the New York Times upon which this investigation was ordered?

Answer. I wrote that article.

Question. From whom did you get the information embodied in that article?

Answer. I received the general facts from a number of persons some time ago; who they were I do not now remember. When the statements were first made to me, I know I said, at least in one instance, to the parties making them, "if you will bring me any evidence that will sustain my action in the case, I will take notice of the matter; but I will not do it until then, because I know how apt witnesses are not to come forward in such cases when wanted—that in these cases there were so many influences surrounding witnesses that nine times out of ten they will fail at the critical moment."

By Mr. Winslow:

Question. To whom was this reply of yours made?

Answer. I do not remember. The committee will naturally see that I have just such statements made to me almost every day in the year, and I have made the same answer in all cases. I remember that I made just such an answer, in this case, to some one. I know that I heard these things from members of Congress in several cases, and they asked me why I did not take notice of them. My answer always was that I would take notice of such cases whenever they were presented to me in such form as would authorize me to refer to them. I was recently informed by a number of persons, and particularly by a Mr. Jones, formerly a doorkeeper of the House, that Mr. J. D. Thomson would undoubtedly be able to give specific facts, if I wished them. I obtained finally the statement of facts upon which I based my publication from Mr. John D. Thomson and Mr. C. B. Shirley.

By Mr. Cochrane:

Question. Was Mr. Fitzhugh referred to?

Answer. He was. I was assured that he was a veracious gentleman, one who could be relied upon, and that he (Mr. Fitzhugh) would substantiate, upon his personal testimony, all the chief facts about which Thomson and Shirley could speak only in part.

By the Chairman:

Question. Then the names of those I obtained of you on Saturday evening last, namely, Fitzhugh, Thomson, and Shirley, were those particularly pointed out to substantiate this charge?

Answer. Yes, sir.

Question. Were any other persons named to you as having any knowledge of the subject?

Answer. There were no others named to me as having any personal knowledge of the matter. I heard of members of Congress makin

statements which seemed to apply, and which did apply, unquestionably, to the party whom I understood to be involved; and I am free to say that their statements tended to produce in my own mind the conviction that the statement made to me by Thomson and Shirley was likely to be true.

By Mr. Cochrane:

Question. Was Mr. Searing the member of the Committee on Accounts alluded to in your article?

Answer. I am no witness against Mr. Searing, or against any other member of the Committee on Accounts. You will notice that I have made no publication affecting any *individual* member of that committee. And when I state to the committee that I have no personal knowledge, I suppose the committee will not desire me to state upon whom my suspicions rested. I disclaim any personal knowledge in regard to Mr. Searing's conduct as a member of the Committee on Accounts, or in regard to the conduct of any other member of that committee; and in my publication I have expressly avoided making any direct charge. I stated in that letter rumors very damaging doubtless to the reputation of the House; and I left the House to decide what action it would take, and to its committee, if it should appoint one, the duty of ascertaining who was the party referred to, as I could not myself give any testimony upon that point.

By the Chairman:

Question. Have you any personal knowledge, derived during this Congress, of any impropriety of conduct on the part of any member of the Committee on Accounts in reference to the passage of any bills by that committee?

Answer. I have no personal knowledge. I never allow myself to have any personal knowledge of any such acts.

Question. At the time you prepared your article had you any testimony, other than the statements of Thomson and Shirley, in reference to this transaction?

Answer. I had no other formal statement; I had no other statement purporting to be based upon the personal knowledge of any party?

Question. Did you prior to the preparation of your article see an affidavit purporting to be signed by Mr. Fitzhugh, making any charge against Mr. Searing in reference to this matter?

Answer. I do not remember that I did; I think I did not.

By Mr. Winslow:

Question. Did you have an interview with Mr. Thomson?

Answer. Yes, sir.

Question. How was that interview obtained?

Answer. I sent to him; and when I saw him, inquired into the facts.

Question. Why did you call upon Thomson as a witness in this matter?

Answer. Because I had heard from Mr. Jones, a former doorkeeper of the House, and from various other parties, that Mr. Thomson had all the facts in his possession.

Question. Did Jones volunteer this statement to you, or did you make the inquiry of him?

Answer. He stated it to me just as any one would state an item of news, knowing me to be connected with the press.

Question. Do you recollect any member of Congress who mentioned this matter to you?

Answer. I should not like to give any name positively. I talked upon the subject with a great many members, but I cannot undertake to decide which of those introduced the subject to me, and to which of them I mentioned the subject myself in the course of conversation.

Question. When you wrote this article did you have in your mind any other member of the Committee on Accounts besides Mr. Searing?

Answer. I distinctly avoided making any particular reference in my article to any individual.

By Mr. Cochrane:

Question. I understand you to state that you made this charge, or based this article in the New York Times, upon statements made to you by those persons, Shirley and Thomson, together with what you understood that Fitzhugh could testify to personally. Now I want to know if in any of the statements which you derived, either directly or indirectly, from those persons, was any other member of the Committee on Accounts implicated except Mr. Searing?

Answer. I will make this general answer and say, that I have no testimony from any one in regard to any member of the Committee on Accounts, except what I have received from the parties named. But I do not want to individualize any member in connexion with this matter. I want to keep myself entirely clear of standing here as an accuser.

By the Chairman:

Question. Then you have no information upon this matter except that derived from these parties you have named?

Answer. No, sir; I have no personal knowledge—no information except from them.

By Mr. Winslow:

Question. We are entitled to know what these men, Thomson and Shirley, told you about any member of Congress, particularly any member of the Committee on Accounts. You will please state to the committee what they said.

Answer. If the committee will allow me I think I can state an objection to my answering that question which they will consider to be a good one. My objection is that I, not being a witness against *any* member of the Committee on Accounts, should not be called upon to answer the question.

By Mr. Cochrane:

Question. I will state, in explanation, that we have examined these three persons, Shirley, Thomson, and Fitzhugh, and they have given their testimony, and we intended to make the examination pretty thorough. Now we desire, in justice to the other members of the Committee on Accounts, as well as in reference to the testimony already taken, to know from you whether their statements implicated anybody else except Mr. Searing.

Answer. I do not wish to make any charge against Mr. Searing.

Question. You are not asked to make any charge; you are asked to state what charges these persons made.

Answer. With that explanation the objection I had is removed. I will now say that their statements did not implicate any other member of the Committee on Accounts but Mr. Searing. My only purpose in not answering the question before was to avoid standing here as a witness against *any* member of the Committee on Accounts.

By the Chairman :

Question. There is an article in the possession of the committee, published in the "Baltimore Exchange," which is understood to state that, since the developments originally attending this transaction, at least two members of the Committee on Accounts have been implicated: Were you the author of that article?

Answer. I do not remember of having written anything of that sort. If you will be kind enough to show me the article I can tell better.

Question. Here is the article; you will examine it and say whether or not you are the author of it?

[From our own correspondent.]

WASHINGTON, *February* 17, 1859.

I am informed that a resolution is in the hands of a member of the House ordering a committee of investigation into charges of corruption preferred against the Committee on Accounts by a portion of the public press, and that it will be moved before adjournment. The telegraph will doubtless advise you of the result before this reaches you. Two members of the committee involved in these charges have stated their desire for investigation, but neither of them, of course, could well move it, as, according to parliamentary practice, the mover must be chairman of the committee of investigation, and the members of the Committee on Accounts themselves are all implicated in the general charge. If the committee is raised I have good reason to believe that the most positive testimony will be introduced, showing that a member of the Committee on Accounts bargained to receive, and subsequently demanded, several hundred dollars as a consideration for passing a certain bill against the House of Representatives through his committee. The facts in brief, as I understand them, are as follows: A gentleman, formerly of Baltimore, supplied the House with sundry articles of furniture, the bill for which amounted to several thousand dollars. This bill was referred by the Committee on Accounts to one of their number to report upon. This member delaying action for a long time, the claimant repeatedly appealed to him to act, but without getting any satisfaction. Finally, after repeated interviews, the desire of the member to make a corrupt arrangement developed itself, and the result was that the claimant agreed to pay the member a certain amount to pass his account.

Soon after the account *was* passed, for a reduced amount, but notwithstanding the reduction, the member still demanded four hundred dollars for his agency in the matter. The claimant failed to respond

satisfactorily. Be it remembered now, that the Committee on Accounts had already *passed* the reduced bill, for some \$6,000, which it then devolved upon the Clerk of the House, or his proper subordinate, to pay. The claimant called at the Clerk's office for his money, but was put off upon the pretence that there was no appropriation out of which to pay it. Thus time was gained until Congress adjourned. If lack of appropriation had been the difficulty before, it could be no longer in the way, for Congress had made all needful appropriations for the current year. Indeed, it remains to be seen whether there *ever* was any deficiency in the contingent fund of the House, out of which this bill was to be paid. Still, however, the claimant was put off, month after month, at the Clerk's office.

Meantime the bill had been assigned to another party, who, becoming incensed at the strange refusal to settle the bill, declared his belief that the delay was a consequence of the refusal of the original claimant to pay the member his corrupt demand, and threatened to expose the entire transaction. Soon after this, Mr. Carter, chief clerk under Mr. Allen, addressed a letter to the original claimant, declaring that he could not pay the account while imputations in connexion with it were out, reflecting upon any one. This letter was accompanied by drafts of two others, to be signed by the claimant and his assignee, in which they exonerated everybody from suspicion. They now declare that they did this under duress, seeing that they could not get their money unless they did sign them. They took the precaution, however, to sign *copies* of those letters, retaining the original drafts. It requires no great acuteness to fathom the motives of this proceeding. But the parties, to make it more apparent, stated that they were assured, if they would hush up and sign the letters, the Committee on Accounts should reconsider the original bill at the *present* session and allow the sum that it had been reduced. These facts I fully believe will all be sworn to by respectable men, who have corroborative circumstances to relate which must carry conviction of the truths of their statements.

Answer. I am the author of this letter. I suppose the sentence to which you refer is the following:

“Two members of the committee involved in these charges have stated their desire for investigation,” &c.

I did not mean to say that *two* members were involved in these charges, but that of *the committee* “involved” in these charges, two members have stated their desire for an investigation for their own protection; in other words, that two members of the “Committee on Accounts” have stated their desire for an investigation. When I wrote that letter I had reference to Mr. Spinner and Mr. Dick, I think, as the members who demanded this investigation.

By Mr. Winslow:

Question. Do you recollect what members of Congress spoke to you upon this subject?

Answer. I remember members of Congress that I have spoken to or talked with about this matter; but it would be difficult for me to attempt to indicate who of them had told me of these facts.

By Mr. Cochrane :

Question. Do you mean to say that members of Congress have pretended to know about this matter?

Answer. No, sir ; but I mean that in conversation they have said : " These things are all over the House, and every body hears them." I have heard such remarks, but I would not attempt, under oath, to say what individual members with whom I have spoken have told me that these charges were afloat. I would not attempt to distinguish them from the general mass of members with whom I have conversed upon this subject.

Question. Then those members merely spoke of those charges as existing in rumor without professing any personal knowledge upon the subject?

Answer. Yes, sir, that was all.

JAMES W. SIMONTON.

No. 12.—JOHN C. MASON, HOUSE OF REPRESENTATIVES.

FEBRUARY 23, 1859.

JOHN C. MASON called and examined.

By Mr. Winslow :

Question. Were you a member of the Committee on Accounts at the last session of Congress?

Answer. I was a member of the Committee on Accounts in the fore part of the last session ; I was chairman of the committee.

Question. Have you any knowledge in reference to the action of Mr. Searing upon the bill of Fitzhugh for \$8,600 for furniture for the new hall, which was referred to the Committee on Accounts?

Answer. There was a bill first presented to the Committee on Accounts by a man by the name of Thomson, according to my recollection, (I learned that Thomson was a clerk of the House under General Cullom,) and it was returned, and they then brought in this bill in the name of Fitzhugh, as I understood. I have no knowledge of Mr. Searing's action upon it.

Question. Do you know of any fact or circumstance tending to show corruption upon the part of Mr. Searing in the discharge of his duty as a member of the Committee on Accounts?

Answer. I do not know how to express my views on that question, because, although I know of no *act* of his, there were *facts* and *circumstances* connected with other doubtful information that induced me to prefer not to be associated with him upon the Committee on Accounts. I so expressed myself to the Speaker and to two or three others, at the time new members were placed on the committee at its second organization.

Question. Your not wishing to serve with him might arise from various causes. The question refers to corruption upon the part of Mr. Searing?

Answer. I do not think that I could give a better explanation than

I have given. What some would call corruption others merely call patronage. I do not know of his receiving any bribe or reward, or anything of the kind, excepting in the way of patronage.

Question. To what do you refer when you use the term "patronage?"

Answer. The circumstance that led me to believe that was this: My understanding at the beginning of the session was, that Mr. Searing agreed with us in a radical change in the number and pay of the employés. Subsequently I learned, from the clerks and employés of the House of Representatives, that some member of the Committee on Accounts intended to make a minority report upon that subject. The next day, when the committee met, I named that I had heard this, and inquired who it was. Mr. Searing stated that he had disagreed with the opinion of the committee upon the amount of pay which the employés should have. Subsequently I was induced to believe, from this and various circumstances, that he was not a suitable member of the Committee on Accounts, and so expressed myself to the Speaker and to others. You may call it a difference of opinion, and whatever you choose to call it.

Question. Between the time when Mr. Searing was acting with the majority and the period when he changed his course upon the committee had there been an appointment made, upon his application, in the Clerk's office, or about the Capitol?

Answer. I understood so. The index clerk, in the Clerk's office, I heard, was promised him.

By Mr. Eustis:

Question. What were the circumstances which induced you to believe that he was not a proper person to be upon the Committee on Accounts.

Answer. I may say that there were a number of circumstances, and probably the most of them might be called rumors, or what I was told by individuals in whom I had confidence. Most of them were of that class.

By Mr. Cochrane:

Question. Please repeat what you have stated informally a few moments ago?

Answer. The clerks were in the office one morning, when I informed them that there would be a meeting of the Committee on Accounts the next morning to pass upon the chief clerk's bills and the pay of the employés of the House generally. The subject came up of the manner I had of referring accounts for examination to the various members of the committee. The chief clerk, Mr. Carter, contended that the papers might be lost or mislaid, whereby the Clerk of the House might lose a large amount of his vouchers, by so distributing the accounts. I informed them that that had always been the custom, and that members of an opposite political party had a right to examine all the accounts, and it betrayed no suspicion upon my part of the accounts being wrong to refer them to those of opposite political parties, but rather confidence in them that they would stand their scrutiny, and this would prevent future investigating committees by their being properly investigated by all the members of the Committee on Ac-

counts; that the fact of some of these furniture accounts being in the hands of Mr. Searing the next morning induced me to believe that the Clerk was willing to have them kept by one member of the committee.

Question. These accounts were found in his hands the next morning?

Answer. Mr. Searing said they were accounts for furniture. He spoke of having examined them, and recommended their passage. They were not passed at that time. Mr. Carter, the chief clerk, took them back, and I never saw them any more after that.

Question. Were they signed by Mr. Searing?

Answer. I do not know whom they were signed by. These are the real facts as regards the matter which influenced me: The first thing was this change of opinion that I have mentioned; then there was this circumstance; and then there were these rumors about town, which led me to advise Colonel Orr not to re-appoint him.

By the Chairman:

Question. Then you advised the Speaker of the House not to re-appoint him?

Answer. I did, at the close of the last session. I told him that the character of his administration of the Speakership might be affected by it. Still I know nothing, of my own knowledge, excepting these acts and other circumstances of that kind in relation to Mr. Searing.

By Mr. Winslow:

Question. Have you any personal knowledge of any improper conduct on the part of Mr. Searing?

Answer. No, sir; excepting that I might consider it improper for him to have these accounts when they should have been before the committee.

Question. Do you know any facts or circumstances tending to show corruption on the part of any other member of the Committee on Accounts?

Answer. I know of no fact or circumstance, or any rumor, or any breath of suspicion against any other member of the committee, and have heard of none.

By the Chairman:

Question. For what reason did you ask to be discharged from the committee at the last session?

Answer. The reason—as expressed to the House last session—that I asked the House to discharge me from serving upon that committee was because they would not regulate the number and pay of the employés of the House. It was in such a condition that you had to guess through all the accounts. That was the reason I would not go on with it at the last session. I took it as the sentiment of the House that they did not intend and declined to regulate that which I considered essential and necessary for the comfort, convenience, and character of the members of the committee. During the pendency of the motion to reconsider, I was urged again to take my place upon the committee. I declined doing so for the reason that it was not regulated, and in its irregular state I should prefer not to be upon the committee. I did not want to return on any terms, but would not do so unless every member was satisfactory to me.

Before signing this deposition the witness appended to it the following statement:

I have examined this report, and while it does not contain all that was stated before the committee, it is substantially, as far as attempted to be reported, my recollections of the facts and circumstances, none of which were of a character which I judge of sufficient importance to report to the House, but which were, in my judgment, proper to be communicated to the Speaker for his information and action, and I take no exceptions to his course in the discharge of so difficult and trying a position as that of Speaker of the House.

JOHN C. MASON.

A Statement from Mr. Searing.

The committee having notified Mr. Searing that, if he desired to do so, he was at liberty to submit a statement to them, he subsequently submitted the following in writing:

A charge having been preferred against me of having demanded of J. W. Fitzhugh \$400, in consideration of having made an agreement with him to exert my influence as a member of the Committee of Accounts of the House of Representatives, to induce said committee to report in behalf of his entire claim upon the government of \$8,623 75, I deem it proper, at this stage of the proceedings of the special committee, to whom the investigation of such charge has been committed, to submit my answer thereto. Enrolled among those legislators to whose charge has been committed the federal legislation of the United States, and occupying a seat in the national councils, I think it sufficient that, as a representative in Congress from the first congressional district of the State of New York, I simply deny all and singular the charges alleged against me, and specifically each fact and circumstance invoked to support the same, or necessarily connected therewith.

Accordingly, I here interpose such a denial. But more especially do I deny that such an offer as that alleged, or any other offer, was ever made to me by the said Fitzhugh. Yet I do not think that my whole duty will have been performed until I shall have directed the attention of the committee to the following considerations, applicable to the evidence before them.

The charge rests upon the testimony of but one person, J. W. Fitzhugh. He was interested, to the extent of his full claim, in its success. He avows the turpitude of an attempt to secure that success through the offer of a bribe. While he carefully locates the place, and fixes the time of the alleged demand by me on him for \$400, when and where the evidence of no person, nor any attending circumstance could be invoked, either for his corroboration or contradiction, it cannot have escaped observation, that upon every material statement, not thus cautiously protected, he has been impeached, not only by the testimony of respectable persons and by attendant circumstances, but by his own deliberately written refutation.

It will be remembered that it was upon my motion, in committee, that 33 per cent. was deducted from Mr. Fitzhugh's account. If my agreement were, as he swears it to have been, to exert a successful influence in behalf of the whole of his account. would it not have appeared to the simplest mind very hazardous and unsafe to demand of an exasperated, because an unsuccessful, suitor the payment of \$400, which depended, according to contract, upon entire success.

The statement that his application at the Clerk's office for payment of his account was answered by a refusal, unless he would withdraw his charges against me, is expressly contradicted by those to whom the application was made.

The unsolicited letter of Mr. Fitzhugh, in evidence before the committee, furnishes the last and strongest evidence of his corruption and perjury. The witness who swears to a charge in the face of his written retraction of the same can be entitled to no consideration.

Such is the evidence adduced to convict me of an infamous offence. Secure in my own innocence, I indignantly repel it, and invite a careful scrutiny of the corrupt motives which manifestly have prompted the charge.

JOHN A. SEARING.

LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATIONS.

[To accompany Bill H. R. No. 711.]

FEBRUARY 26, 1859.—Ordered to be printed.

Mr. PHELPS, from the Committee of Ways and Means, made the following

REPORT.

The Committee of Ways and Means, to whom were referred the amendments of the Senate of the United States to Bill (H. R. 711,) "making appropriations for the legislative, executive, and judicial expenses of the government for the year ending the thirtieth of June, eighteen hundred and sixty," having had the same under consideration beg leave to report as follows:

They recommend that the House of Representatives agree to the 1st, 2d, 4th, 5th, 7th, 8th, 10th, 15th, 18th, 20th, 21st, 22d, 24th, and 25th amendments of the Senate.

They recommend that the House of Representatives agree to the 3d amendment of the Senate, with an amendment as follows: Add at the end of said amendment the following words: *And the further sum of fifteen hundred and forty-nine dollars and fourteen cents, being for the moiety payable by the Clerk of the House of Representatives, and to form a part of the contingent fund of said House, and disbursed by the Clerk thereof.*

They recommend that the House of Representatives agree to the 17th amendment of the Senate, with an amendment as follows: Strike out the 8th, 9th, and 10th lines of the said amendment, and insert in lieu thereof, these words: *One hundred and seventy-nine dollars and twenty-three cents.*

They recommend that the House of Representatives do not agree to the 6th, 9th, 11th, 12th, 13th, 14th, 16th, 19th, and 23d amendments of the Senate.

JOHN TATHAM AND DAVID CHEETHAM.

MARCH 3, 1859.—Laid upon the table and ordered to be printed.

Mr. BRAYTON, from the Committee on Patents, made the following

R E P O R T.

The Committee on Patents, to whom was referred the petition of John Tatham and David Cheetham, asking Congress to pass an act authorizing the Commissioner of Patents to hear an application for the extension of a patent granted them March 14, 1844, for an "improvement in laying roving in cans," for the further term of seven years, report:

That said petition is not accompanied by any account of their receipts and expenditures, or any evidence in support thereof. The committee therefore report adversely, and ask to be discharged from the further consideration of said petition.

JOHN TATHAM AND DAVID BENTHAM

MADE A BILL WHICH WAS THE BILL AND VOTED TO BE PASSED

THE HOUSE OF REPRESENTATIVES

THE FOLLOWING IS THE REPORT OF THE COMMITTEE ON PATENTS

REPORT

The committee on patents, to whom was referred the petition of John Tatham and David Bentham, asking Congress to pass an act to secure the right of invention in the case of a patent granted in the State of New York, for an improvement in the way of making paper, report as follows:

The petition is not accompanied by any account of their invention, nor by any evidence in support thereof. The committee therefore cannot recommend the bill to be passed, and ask to be discharged from the further consideration of the same.

The committee on patents, to whom was referred the petition of John Tatham and David Bentham, asking Congress to pass an act to secure the right of invention in the case of a patent granted in the State of New York, for an improvement in the way of making paper, report as follows:

The petition is not accompanied by any account of their invention, nor by any evidence in support thereof. The committee therefore cannot recommend the bill to be passed, and ask to be discharged from the further consideration of the same.

FREDERICK E. SICKELS.

MARCH 3, 1859.—Laid on the table and ordered to be printed.

MR. EDIE, from the Committee on Patents, made the following

REPORT.

The Committee on Patents to whom was referred the petition of Frederick E. Sickels, praying for the passage of a bill referring to the Commissioner of Patents for a re-hearing of his application for the extension of his patent of May 20, 1842, beg leave respectfully to report:

On the 20th of May, 1842, Letters Patent of the United States were granted to Frederick E. Sickels, for fourteen years from that day for certain "improvements in the manner of constructing the apparatus for lifting, tripping and regulating the closing of the valves of steam engines."

The patent being about to expire, Sickels, on the 15th of December, 1855, made application to the Commissioner of Patents, under the provisions of the 18th section of the general patent act of July 4, 1836, for an extension of the patent for seven years from its expiration. That act requires the applicant to furnish to the Commissioner "a statement in writing, under oath, of the ascertained value of the invention, and of his receipts and expenditures, sufficiently in detail to exhibit a true and faithful account of loss and profit in any manner accruing to him from and by reason of said invention." The act also provides that, "if upon a hearing of the matter it shall appear, to the full and entire satisfaction" of the Commissioner, having due regard to the public interest therein, that it is just and proper that the term of the patent should be extended, by reason of the patentee, without neglect or fault on his part having failed to obtain from the use and sale of his invention, a reasonable remuneration for the time, ingenuity and expense bestowed upon the same, and the introduction thereof into use, it shall be the duty of the Commissioner to renew and extend the patent, by making a certificate thereon of such extension, for the term of seven years from and after the expiration of the first term." By the subsequent act of May 27, 1848, the Commissioner is required, when an application is made to him to extend a patent to "refer the case to the principal examiner having charge of the class of inventions to which the case belongs, who shall make a full repor

to said Commissioner of the said case, and particularly whether the invention or improvement secured in the patent was new and patentable, when patented, and thereupon the said Commissioner shall grant or refuse the extension of said patent."

In the present case, the Commissioner, on the filing of Sickels' petition for extension, caused the usual notice to be published, and fixed the 25th of April, 1856, as the day for closing the testimony, and the 5th of May, 1856, as the day for filing the arguments. Mr. George H. Corliss, of Providence, Rhode Island, opposed the granting of the extension and duly filed his reasons of opposition, and a large amount of testimony was taken both on the part of Mr. Sickels and of Mr. Corliss. Mr. Sickels also filed a statement in writing under oath, intended to be the statement of receipts and expenditures required by the act.

The principal grounds urged before the Commissioner against the extension were :

1st. That the statement of receipts and expenditures filed by Sickels, was not such a detailed statement as the statute required.

2d. That the statement was made on hearsay information and had not been verified by any person who had knowledge of the facts.

3d. That the patented invention was not new and patentable at the time it was patented.

The case having been referred by the Commissioner according to law, to the principal examiner having charge of the subject of steam machinery, (Mr. Thomas Y. Everett) he, on the 3d of May, 1856, having had the matter under consideration for eight days, reported to the Commissioner fully upon the case, and decided,

1st. That Mr. Sickels was not the original and first inventor of what was covered by the claims of his patent.

2d. That if the testimony produced on the application for extension, in regard to the question of priority of invention, had been before the Patent Office at the time the patent was originally granted, it would not have been granted, and that it was granted solely on the strength of an *ex parte* affidavit made by one Truman Cook, then a joint owner with Sickels of the invention sought to be patented.

On the 5th of May, 1856, the day appointed for the purpose, arguments both for and against the extension were filed in the Patent Office by the respective parties. On the 15th of May, 1856, in pursuance of an appointment made by the Commissioner of Patents six days previously, at the request of the counsel for Mr. Sickels, both Mr. Sickels and his opponent appeared before the Commissioner not only personally, but by two counsel for each of them, and the case for and against the extension was argued orally before the Commissioner in person. Prior to the oral hearing, but after the 5th of May, the counsel for Mr. Sickels had also filed an additional argument in reply especially to the report of Mr. Everett on the question of priority of invention.

On the 20th of May, 1856, the day the term of the patent expired, the Commissioner filed his opinion and decision in the case, refusing the extension, and assigning as his reasons:

1st. That the patentee's statement of receipts and expenditures was

not made sufficiently in detail to exhibit a true and faithful account of loss and profit accruing to the patentee.

2d. That the account was rendered at second hand, and that there was no evidence of its correctness from the parties who would know of its correctness.

3d. That as the case had, under the act of 1848, been referred to Mr. Everett, and he had after full deliberation, reported that the invention was not new and patentable at the time it was patented, it was questionable whether it was proper for the Commissioner to review such a decision of the examiner, inasmuch as the law devolved that duty entirely on the examiner, differing in that particular from other examinations which were contemplated to be made constructively by the Commissioner himself.

4th. That the Commissioner would feel unwilling to reverse the decision of the examiner in such a case, unless clearly satisfied that such decision was erroneous; that he had in the present case undertaken to review the decision; and that although he saw some reason to doubt the correctness of the decision of the examiner, there was not sufficient to cause the scale to preponderate decidedly in the contrary direction.

On the 15th of December, 1856, Mr. Sickels presented to the House of Representatives, a petition praying that his patent might be extended for seven years, or that the Commissioner of Patents might be authorized to consider the application again, and decide upon it according to law. Numerous remonstrances, and particularly one by Mr. Corliss, were presented against the granting of the prayer of Mr. Sickels' petition. The petitioner and remonstrants were heard by counsel before the Committee on Patents of the House of Representatives, to which committee the petition and remonstrances had been referred. The committee never made any report in the matter.

The prayer of Mr. Sickels' present petition differs from the prayer of his petition of last year. He does not now ask for a direct extension of his patent by Congress, but he prays "that his application for extension may be referred to the Commissioner of Patents for hearing upon the same principles that govern other similar applications, in order that your petitioner may have the benefit of a hearing before a judgment shall be finally pronounced against him, which he was in effect denied on his application under the act of Congress."

Various remonstrances against granting to Mr. Sickels the relief prayed for have been presented to the House, and referred to the committee, and Mr. Sickels and his opponents have appeared before us, by their respective counsel, who have fully argued the matters involved in the petition. The principal points urged on the part of Mr. Sickels were these:

1. That the priority of Sickels' invention was established by a verdict in his favor in a suit tried in New York in 1843, against one Rodman.

2. That in a suit brought on the patent in Rhode Island, in 1849, by Charles Y. James, the counsel for the defence, who were the Hon. Benjamin R. Curtis, lately an associate justice of the Supreme Court of the United States, and the present Chief Justice Ames, of Rhode

Island, admitted on the trial the priority of the patentee's invention, and withdrew their defence of want of novelty.

3. That, in a subsequent suit in New York, Mr. Justice Nelson was satisfied that the petitioner was the first inventor.

4. That Mr. Everett, the examiner, decided against the petitioner on the question of priority of invention before the argument of petitioner's counsel was filed, and without hearing any argument or explanation of the testimony.

5. That the petitioner, being taken by surprise by a decision made against him without a hearing, appealed to the Commissioner to reverse the decision; but the Commissioner was unable to examine the case satisfactorily for the want of time, by reason whereof the petitioner failed to obtain the extension.

6. That, since the refusal of the extension, the question of priority of invention has been decided in favor of the petitioner by Judge Grier, in the United States court for New Jersey.

7. That the Hon. Chales Mason, the late Commissioner of Patents, wrote a letter in favor of Sickels to the Committee on Patents of the last House of Representatives.

8. That Sickels' invention is so valuable that when used it saves one-quarter of the fuel that would otherwise be consumed.

9. That Sickels' past and present poverty is such as to entitle him to the relief he asks.

Without going into a detailed argument on the subject, the committee content themselves with saying that they are satisfied that the several grounds urged by Mr. Sickels why he should have the relief he prays for wholly fail.

1. In regard to the trial in the suit against Rodman, in New York, in 1843, it is sufficient to say that not one of the witnesses who proved to the entire satisfaction of the examiner the want of priority of invention in Sickels, was examined on the trial against Rodman.

2. The allegation in regard to the admission made by Mr. Justice Curtis and Chief Justice Ames, the counsel for the defence on the trial in Rhode Island in 1849, is shown to be wholly incorrect by the letter from those gentlemen which was filed with the Committee on Patents of the last House of Representatives.

3. In regard to the suit in New York before Mr. Justice Nelson, the committee do not find in the opinion there delivered by that judge any intimation as to the question of priority of invention.

4. The reference of the case by the Commissioner to Mr. Everett, the examiner, was expressly required by the act of 1848, before cited. His action in examining the testimony as to the novelty and patentability of the invention, immediately after the testimony was closed, and in reporting upon it to the Commissioner before the day fixed for filing the arguments addressed to the Commissioner, and which the Commissioner was to consider in deciding whether to grant or refuse the extension, was not a departure from the usual practice of the Patent Office in cases of a similar nature. Besides, if the examiner did not have the benefit of an argument on the part of Mr. Sickels, he was also without any argument on the part of his opponent, and his decision was the result of an unbiassed, dispassionate, and careful

examination of nothing but the testimony itself, unaffected by the superior skill or power of counsel on one side or the other.

5. The petitioner studiously suppresses in his petition all mention of the oral argument had before the Commissioner on the 15th of May, 1856, and of the second written argument filed prior to that day on the part of Mr. Sickels, in especial reply to the examiner's report on the question of priority of invention, and seeks to convey the impression that the petitioner's case was disposed of, and the extension refused, without a proper hearing, even by the Commissioner himself.

On the contrary, the case was fully argued before the Commissioner by both parties, both orally and in writing, and it is apparent from the filed decision of the Commissioner that he examined it carefully in detail, in all its branches, and revised the examiner's decision on the question of priority of invention.

The two objections before specified as the first two urged by the Commissioner in his decision against the extension, have in no manner been attempted to be obviated. The defects pointed out were defects in matters required by statute to be shown to the Commissioner, and were not defects under technical rules made by the Patent Office.

They were defects in jurisdictional matters. The statement in writing and the other evidence put in by the petitioner entirely failed to fulfil the requirements of the law. The account was not in detail, and was entirely second hand, and unsupported by testimony. Unless the statute was complied with in those respects, the Commissioner had no jurisdiction to grant the extension.

6. The decision of the question of priority of invention upon the application for extension was expressly confided by law to Mr. Everett, the examiner, and the Commissioner did not overrule the examiner's decision.

Those officers, selected for their knowledge and skill, conversant with mechanical questions, and the Commissioner, (Judge Mason,) a lawyer of high rank who formerly held a judicial office, must be presumed to be able to pass upon the question of priority in an invention intelligently and accurately, and it is no reason for interfering with their deliberate judgment that another tribunal has differed with them.

7. As to the statement that Judge Mason, the late Commissioner of Patents, wrote a letter in favor of Sickels to the Committee on Patents, of the last House, your committee are entirely satisfied that he never wrote any such letter. This statement appears to have been based upon the fact that a year ago Judge Mason wrote a letter to the counsel for Mr. Sickels, saying in substance, that if he had been satisfied that Sickels had been the first inventor of the subject matter of his patent, the greatest obstacle in the way of the extension of his patent would have been removed.

8. Mr. Sickels says in his petition, that there are very few of his improvements yet introduced into use. But this statement is in direct contradiction to the evidence given by his counsel, Mr. Dickerson, on the application before the Patent Office, viz: That there were at least 200 infringements, besides the 100 engines, on Mr. Corliss' plan, all of which were about to be prosecuted. While it is perfectly idle for the petitioner to say that his invention is so valuable as to save one -

quarter of the fuel used and at the same time to confess, as he does in his petition, and as Mr. Dickerson did in his arguments, that now, 16 years after the granting of the patent, the prejudices of engineers prevent the general adoption of so valuable an invention, and that it will not even be taken as a gift.

9. As to the plea of poverty, it appears that the extension, if granted, will inure in but a small degree to Sickels' benefit. For it is stated by the petitioner in his sworn statement to the Patent Office, on his application there for extension, that he has agreed to convey the exclusive right to his patent, if extended, for land engines to Messrs. Thurston, Gardner & Co., of Providence, Rhode Island, on condition of their paying the expenses of the extension.

Cases may perhaps arise in which it might be proper for Congress to relieve a party against the consequences of a failure on his part to comply with a technical rule of the Patent Office, or of a failure, from accident or mistake, to take his proceedings within such time, or in manner as he should have done. But this is not such a case. It is a case where a party, with every opportunity, and with all the time requisite, failed, without any accident or mistake, to make out such a state of facts as the statute required to exist before an extension could be granted. The Commissioner of Patents was the sworn public officer, to whom by law was confided the duty of deciding upon the question. He acted in the matter in a judicial rather than in an executive capacity. He had the opposing parties before him, by their counsel, and the testimony on both sides was taken by deposition, before magistrates on oral examination and cross-examination by the respective counsel. He heard and considered the arguments, and decided the case. And now Congress is asked to reverse his decision, or to grant a new trial to the defeated party. As well might it undertake to grant new trials to all disappointed suitors, in all the courts of the United States. Congress has under the Constitution, no judicial power. And practically to exercise that power on an appeal from the Commissioner of Patents, by overruling his decision, or by granting a new trial before him, would be an unwarrantable and dangerous exercise of power, unsound in principle, and mischievous as a precedent.

It ought not to be the policy of Congress to override the decisions of delegated public authorities, made in due form of law, on matters especially committed to their jurisdiction, in the course of the administration of a system affecting all citizens alike, and which decisions are intended to be final and without appeal. Such action of Congress is special legislation of the worst kind, invidious in its character, and open to abuse.

The committee are therefore of opinion that the prayer of the petitioner ought not to be granted.

J. V. A. WEMPLE AND GEORGE WESTINGHOUSE.

MARCH 3, 1859.—Laid on the table, and ordered to be printed.

Mr. EDIE, from the Committee on Patents, made the following

R E P O R T .

The Committee on Patents, to whom was referred the petition of J. V. A. Wemple and George Westinghouse, submit the following report :

That, in their judgment, the prayer of the petitioners should not be granted, for the reason that they have already been before the Commissioner, who refused them an extension on the ground of want of proof relative to receipts, expenditures, and profits, connected with the invention for which a renewal is sought. When a party has had a fair trial and loses his case, either through want of merit or from the non-production of evidence which it was in his power to produce, he cannot fairly ask to have a new trial in his case. To grant one when no merit exists would be folly ; and to allow one in the other case would be like an encouragement of neglect, inattention, and carelessness. No man has a right to ask relief from his own *laches*.

The committee ask to be discharged from the further consideration of the subject.

J. F. A. WEMPLE AND GEORGE WESTINGHOUSE

Plaintiffs in Equity—Filed in this Court and removed to be tried.

Mr. West, from the Committee on Patents, made the following

REPORT.

The Committee on Patents, to whom your report on the petition of J. F. A. Wemple and George Westinghouse, relating to the following patent:

That in their judgment, the power of the petitioners should not be granted, for the reason that they have already been before the Commissioner, who issued them an extension on the ground of want of money relative to repairs, expenditures, and profits, connected with the invention for which a renewal is sought. When a party has had a fair trial and loses his case, either through want of merit or through non-production of evidence which it was in his power to produce, he cannot fairly ask to have a new trial in his case. To grant one when no merit exists would be folly; and to allow one in the other case would be like an encouragement of neglect, inattention, and carelessness. No man has a right to ask relief from his own fault. The committee ask to be discharged from the further consideration of the subject.

BENJAMIN H. BENTON.

MARCH 3, 1859.—Laid on the table, and ordered to be printed.

Mr. EDIE, from the Committee on Patents, made the following

R E P O R T .

The Committee on Patents, to whom was referred the memorial of Benjamin H. Benton, asking an extension of his patent for a surveying and calculating instrument, for the benefit of George H. Whitescarver, ask leave to report:

That the memorialist does not ask an extension for his own benefit, but for the benefit of an assignee, who, he claims, made important suggestions to the memorialist in the invention which the memorialist now seeks to have extended.

The reason assigned by the memorialist for asking this legislation at the door of Congress is, because of an error in his application to the Patent Office, by which he did not make his application for an extension within the time specified by law.

But your committee have no evidence before them to show that the invention was either new or useful; nor is there any statement of receipts and expenditures to enable your committee to form any opinion on these essential particulars; nor is there, as your committee are aware, any precedent of granting an extension of letters patent for the benefit of an assignee.

In view of these facts, therefore, your committee are unanimously of the opinion that the prayer of the memorialist ought not to be granted, and ask to be discharged from the further consideration of the subject.

SAMUEL COLT.

MARCH 3, 1859.—Laid on the table and ordered to be printed.

Mr. EDIE, from the Committee on Patents, made the following

REPORT.

The Committee on Patents and the Patent Office, to whom was referred the petition of Samuel Colt, praying for the renewal of letters patent for "Colt's Repeating Firearms," submits the following report:

Letters patent were granted to the petitioner on the 25th of February, 1836, and renewed by the Commissioner of Patents for seven years from the 25th of February, 1850. The term of renewal expired more than one year ago. The present application is to the extraordinary power of Congress for a legislative renewal.

Your committee does not deem it necessary to enter into an elaborate argument to show why the prayer in the petition submitted to them should not be granted. In their judgment it will be abundantly sufficient if, in addition to stating the impolicy of granting special privileges without some strong controlling necessity, they present one or two other reasons which appear to them conclusive of the case.

It was alleged, and not denied, during the hearing of the case, that the petitioner had realized an immense fortune from the proceeds of his invention, amounting to something like half a million of dollars. True, it was urged on the part of petitioner that no portion of these proceeds had been received from or on account of sales made in the United States, and that, therefore, no remuneration within the meaning of the rules established for the government of applications for renewal had been realized by the applicant. Without undertaking to say how the position would have been decided by a Commissioner of Patents on an application for renewal under existing laws, your committee have no hesitancy in coming to the conclusion that the failure of any particular locality to purchase a patented article, during the continuance of the patent, is no good reason for the extension of the letters patent in that locality if the patentee has received a sufficient reward for his discovery by sales made in other localities. If the applicant in the case has been well and handsomely paid for his improvement in fire-arms, it can make no difference to him from what quarter of the world his pay comes; and neither he nor any one else can deny

that half a million of dollars is a sum entirely sufficient to satisfy the wants of a reasonable man for almost any great public service that he could render. In the judgment of your committee Colonel Colt has realized a princely fortune from the proceeds of his invention, more than sufficient to satisfy even the cupidity of any man, and for this reason, were there no other, the extension ought not to be made.

It was impossible to procure from petitioner anything like a full statement of the receipts arising from the sales "of the repeating firearms," either in the United States or elsewhere. Your committee never has reported favorably on any application for renewal of letters patent, without such statement having first been furnished; and is of opinion, that the refusal to present such statement is, of itself, strong ground for inference that if furnished, it would go far to make out a case against the party applicant. The petitioner in this case cannot expect to break down all the rules that have heretofore governed your committee, for his especial benefit; but can only hope to succeed by making out a case under the rules adopted by the committee, and inflexibly applied to all seeking renewals of letters patent. The petitioner in this case having, in the judgment of the committee, failed to make out a case such as would justify Congress in granting the prayer contained in his petition, for the reasons here set forth, and for many others not now presented, it is respectfully recommended that said prayer ought not to be granted.

The committee also ask to be discharged from the further consideration of the subject.

J. C. COAN.

MARCH 3, 1859.—Laid on the table, and ordered to be printed.

Mr. WOOD, from the Committee on the Post Office and Post Roads,
made the following

R E P O R T .

The Committee on the Post Office and Post Roads, to whom was referred the petition of J. C. Coan, praying for compensation for extra mail service on route No. 6141, have had the same under consideration, and beg leave to report as follows :

From the evidence presented to the committee it appears that the said J. C. Coan contracted to carry the mail from Greenville to Spartansburg, in South Carolina, twice a week, from the 1st of July, 1855, at the rate of \$266 per annum ; that the Post Office Department reserved to itself the right to require three trips per week, the additional trip to be paid for *pro rata* with the original contract ; that the petitioner, on his own responsibility, and without any notice from the Post Office Department, and in face of the plain and unmistakable provisions of the contract, undertook to make three trips per week, and that the department had no notice of this fact until nearly two months had elapsed after the said extra service had been performed.

The committee regard it as unfortunate for this contractor that he should have made the mistake of supposing that the option of making an additional trip per week was vested in him ; but, although the amount petitioned for is small, and although the extra service was actually rendered, yet, being rendered without proper authority, the committee cannot but regard the payment of such a claim not only as in violation of law, but as opening the door to a system which, if generally pursued, would take all control from the Post Office Department, and place the mail service entirely in the hands of irresponsible contractors.

The committee therefore report adversely to the claim of the petitioner.

DOUGLASS OTTINGER.

MARCH 3, 1859.—Laid on the table and ordered to be printed.

Mr. MAYNARD, from the Committee of Claims, made the following

R E P O R T .

The Committee of Claims, to whom was referred the petition of Douglass Ottinger, "for compensation for having invented an apparatus for rescuing the passengers and crews of sinking vessels," have had the same under consideration and beg leave to report:

That the only paper submitted to your committee is the petition of claimant, unsupported by any evidence; but supposing the facts all to be as alleged in the petition, your committee can perceive no foundation for a claim upon the government for compensation. As the inventor of the "surf car," he may have won the gratitude of the sea-going portion of the public, and conferred great benefits upon "his fellow seamen and those whose lives are dependent on their skill and care," but all this can originate no claim upon the federal treasury, and your committee therefore report back the petition and ask to be discharged from its further consideration.

DOUGLASS OTTINGER.

March 2, 1875. Held on the table and ordered to be printed.

Mr. ALABAMA, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Jonathan Ottinger, for compensation for having been an agent for the recovery of the passengers and crews of the ship "Hesperus," from the same under consideration, beg leave to report:

That the only paper submitted to your committee is the petition of Ottinger, supported by any evidence; but suggesting the facts all to be alleged in the petition, your committee can perceive no foundation for a claim upon the Government for compensation. As the history of the "Hesperus" case, we may have seen the attitude of the majority portion of the public, and considered great benefits upon the lives of men and their wives and children on their skill and courage, but all this can originate no claim upon the Federal treasury, and your committee therefore report back the petition and ask to be discharged from further consideration.

GEORGE P. STILES.

MARCH 3, 1859.—Laid on the table and ordered to be printed.

Mr. MAYNARD, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of George P. Stiles, praying "for indemnity for his library, which was destroyed by the Mormons," have had the same under consideration, and beg leave to report:

The petitioner was appointed an associate judge of the United States court for the Territory of Utah in August, 1854. In 1856 his office was broken open in the night and his private law library destroyed. He represents his library to have contained eight hundred volumes, and attributes its destruction to "an attempt on his part to enforce the laws of the United States." He estimates his loss at \$4,000.

Your committee scarcely deem it necessary to inquire into the correctness of these statements, since their establishment by testimony would lay no foundation whatever for a claim against the government. When Judge Stiles accepted his appointment and removed to Utah the United States no more insured his library than they insured his life. If he was inclined to carry with him into Utah one thousand or ten thousand dollars worth of books, it was a matter that in no way concerned the government; nor was their subsequent destruction by the Mormons a matter proper for the consideration of Congress. Your committee therefore report back the petition, and ask to be discharged from its further consideration.

GEORGE P. BATES.

March 2, 1897. Filed on the table and ordered to be printed.

Mr. MAYNARD, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of George P. Bates, praying that indemnity for his library, which was destroyed by the Mormons, be paid him, and the same under consideration, and the report to report:

The petitioner was appointed an associate judge of the United States court for the Territory of Utah in August, 1861. In 1862 his office was broken open in the night and his private law library destroyed. He represents his library to have contained eight hundred volumes, and attributes its destruction to "an attempt on his part to enforce the laws of the United States." He estimates his loss at \$1,000. Your committee scarcely deem it necessary to incorporate into the records of these statements, since their establishment by testimony would lay no foundation whatever for a claim against the government. When Judge Bates accepted his appointment and removed to Utah the United States no more issued his library than they issued his life. If he was inclined to carry with him into Utah one thousand or ten thousand dollars worth of books, it was a matter that in no way concerned the government; nor was their subsequent destruction by the Mormons a matter proper for the consideration of Congress. Your committee therefore report back the petition, and ask to be discharged from its further consideration.

AMERICAN ARTISTS.

MARCH 3, 1859.—Laid on the table, and ordered to be printed.

Mr. HUMPHREY MARSHALL, from the select committee, submitted the following

REPORT.

The select committee to whom was referred the memorial of the artists of the United States report:

Your committee, consisting of five—Messrs. Humphrey Marshall, Lawrence W. Keitt, George Taylor, Edward Joy Morris, and George H. Pendleton—were appointed on the 1st day of June, 1858, in pursuance of the following resolution:

Resolved, That the memorial of the artists of the United States be, and the same is hereby, referred to a select committee of five, to be appointed by the Speaker, with instructions to report upon the expediency of granting the petition of the memorialists, and with power to report by bill or otherwise.

Your committee have given to this important subject as much time as it was possible under the pressure of other legislative duties. The "Art Commission" asked for by the artists of the United States in their memorial your committee consider important and proper; but as a provision for such a commission has been made in the clause of the appropriation bill for the Capitol extension, your committee have not recommended a joint resolution for that purpose. If the clause inserted in the appropriation bill is fully carried out it will lead to such further and other legislation as the subject requires.

Painting and sculpture are the handmaidens of history to record the traits and characteristics of national life, and to convey to after ages, by images presented to the eye, the costumes, arts, and civilization of such periods as the artist may embody upon his canvas or grave upon the marble. The ruins of Nineveh and Babylon furnish from their buried walls and broken statuary a more correct idea of the civilization that existed within them than enterprise can now gather from any other sources. Art is language; and it is peculiarly useful as an index to the civilization of a people—a key to the volume of their national life. The eye of intelligence hunts for the hidden mysteries of past greatness among such works of art as the antiquarian can discover, and the mind of the student-artist reproduces, by the aid of these, the living picture of ages long since passed and almost forgotten.

The American people have a history many of whose passages deserve to be engraved upon imperishable materials. It embodies a new idea. It imports an advanced step in the elevation of man to the true dignity of his nature. It has been developed through circumstances of difficulty and danger which have afforded opportunities for the display of the most conspicuous examples of valor, prudence, fortitude, genius, wisdom, and patriotism, each of which Art should commemorate in such connexion as to render it part of the nation's fame. How shall this history be written in the most enduring form? Painting and sculpture can write it to be read by future times as we now read the story of buried cities, whose relics of art are the only monuments of them that stand; the more perishable materials of their letters have been swept away by time. Pericles and Phidias live yet in the classic lines of the Parthenon. Michael Angelo secured an immortal name in the majestic pile of St. Peters. Other nations have promoted the arts by offering the masters of their art-professions public employment in planning or executing the structure and decorative designs of public buildings and grounds, and this committee know of no instance where such encouragement has failed to meet a recompense in some work worthy the fame of the artist and of his patron. Why may not American artists turn with solicitude to *their* government for similar encouragement? The Capitol of the United States is a most extensive edifice, on the structure of which millions of the public treasure have already been expended, and in the decoration of which, by statuary and painting, the widest field is open for the genius of our artists. It might have been made a splendid testimony of the national taste by being adorned with illustrations of American history. For this purpose no class of men could have been employed with more assurance of success, both for designs and execution, than the practical and professional artists of our own country who have attained the front rank of their profession. No other class of the people combine the same knowledge of coloring, of forms, and the various objects of professional skill, that these memorialists certainly possess, and there are none superior to them in the sentiment of true patriotism. The committee have not been informed that American artists have been engaged upon the embellishment of the Capitol, but they have been made painfully conscious that the work has been prosecuted by foreign workmen under the immediate supervision of a foreigner. As a consequence, the committee find nothing in the design and execution of the ornamental work of the Capitol, thus far, which represents our own country, or the genius and taste of her artists. The first point to be ascertained in the prosecution of so great a work is to learn what *can* be done; next, *how* it is to be done, and by whom? A general *plan* of decoration should be determined upon—a classification of the parts of the entire building, and an appropriation of these parts to particular departments of art. There is no necessity to attempt to fill up niches and panels immediately—that should be the work of time, and for the employment of the highest professional skill and taste. In the meanwhile the expenditure of money uselessly might profitably be avoided by leaving the niches vacant and the panels unfilled, and the other parts of the building it may be de-

signed to embellish only so far dressed as not to offend the spectator. A plain coat or two of whitewash is better, in the opinion of this committee, for a temporary finish than "the tawdry and exuberant ornament with which many of the rooms and passages are being crowded."

This special committee, not finding themselves clothed with instructions to present any general plan or design for the completion of the work, have not entered upon the consideration of any specific proposition, and have none, therefore, to be submitted to Congress at this time. But the committee have considered the course taken by other governments under similar circumstances to those in which the United States are now placed in regard to the Capitol and public buildings of the country, and think it may not be without advantage that some reference thereto should be embodied in this report, accompanied by a general suggestion from this committee.

A few years ago England was precisely in the same condition as our own in relation to the development of art. The erection of the new houses of Parliament presented the occasion for that government to demand the aid of art in their decoration, and it was embraced by the public authorities to illustrate upon enduring monuments before posterity the character of Great Britain as a civilized nation and her artistic appreciation of those passages in British history which deserved to be commemorated throughout future times. Her artists had therefore been compelled to seek commissions from individuals which could be indulged in by the wealthy only. Art had not been cherished as important to education, or as conducive especially to national refinement; as a blessing to the poor, or as a means of information and elevation to all classes who had access to the public buildings. The erection of the new Parliament house was accepted as the proper era for a new development in this direction. Accordingly a select committee was raised to devise the best means of accomplishing such development through the opportunity which was then afforded to encourage arts. This committee was very thorough in its investigations. Testimony of the most distinguished artists in the world was taken; agents were sent abroad to examine the various schools and methods of painting, and the information obtained by their researches is embodied in reports made to Parliament, to which your committee have had access, and which may be found in the library of Congress, in Parliamentary Papers for 1841-'42-'43-'44, vols. 6, 25, 29, 31.—(See extracts in Appendix marked "B" and "C.") During the course of the investigation a question was asked of Sir Martin Arthur Shee which deserves especial consideration both for the point it presents and the answers it elicited.

"Question. What would be your opinion as to the employment of foreign artists?

"Answer. If the object is to encourage the arts of *our country*, to elevate its character, &c., then I should think the proper mode would be *to employ and cultivate native talent*. If I am correct in supposing that the object of the committee in the present instance is to render the opportunity which the building of the houses of Parliament now affords available for the promotion of the fine arts; that the object of

the committee is not so much to forward the arts themselves, as, through their influence, to advance the great end toward which the promotion of the arts can be considered but as a means—the civilization of our people; to give to their minds a direction which may tend to withdraw them from habits of gross and sensual indulgence; to secure and sustain the intellectual supremacy of our country, not only with respect to the present age, but with reference to posterity; and, above all, to prove that we are capable of appreciating those exploits of patriotism, those exertions of wisdom and virtue, which have adorned the annals of British history, and that we are not at a loss for talents worthy of being employed in their commemoration; if these are the objects which the committee have in view, I humbly conceive that the employment of *foreigners* on the occasion supposed would be inappropriate and inconsistent with such purposes.”

Others corroborated this opinion, and the competition which was invited for the work was finally confined to British subjects, including foreigners who may have resided ten years or upwards in the United Kingdom of Great Britain and Ireland.

The result of these investigations was an appointment of an Art Commission, comprising four of the most eminent artists who have had the superintendence of the decoration and embellishment of their public buildings, and the result has been to place art in England, by this timely national aid, upon a secure and permanent basis, calculated to encourage the young and aspiring, and to do justice to the old and more experienced artists. Thus a corps of able men has been training for the work, and a series of important historic pictures and sculptures have been produced which private patronage never would have called forth. Your committee believe that the adoption of a system equally liberal and judicious would insure results here equally satisfactory and desirable. There is no want of talent among the artists of the United States, as their works and foreign reputation abundantly attest. There is in the genius of free institutions a spirit which should and will give to taste, and skill, and the poetic illustrations of those qualities which ennoble a nation and “adorn a man,” more powerful development in the United States than they could have under other systems of government. What the artist wants is recognition by his country—encouragement, protection, employment—when it can be properly afforded, and then he will produce results worthy of the age and the land in which he lives. But the history of art in all countries proves that without national aid art never has reached its highest development. It is said that “all artists know that the preparation for painting or modelling an important work requires as much or more labor and study that the execution of it; and without some incentive beyond the precariousness of private patronage, and while wanting the sympathy of their government—the greatest of all stimulants to noble exertion—the higher walks of art must be neglected.”

Let American artists, then, feel the sustaining hand of their government through the intelligent management of an Art Commission appointed under a resolution of Congress, and whose functions shall be confined to the selection of designs for the embellishment of the Capitol and other public buildings and grounds at this national metropolis,

and this committee entertain no doubt that the result will vindicate the ability of American artists to compete with any known to the world. But so long as by the employment of foreign artists and foreign workmen upon every department of the public buildings, whether mechanical, architectural, or ornamental, the native artist feels that some power divorces him from public sympathy, and that his profession and his proficiency in it are unappreciated by his country, we shall be deprived of the ennobling and healthful influence of his genius. The erection and embellishment of the nation's Capitol affords the opportunity for Congress to encourage American art and to develop *American* genius in the departments of art. At the risk of unfriendly criticism, this committee ventures the suggestion that the field of competition should be confined to citizens of the United States, because art, to be living, must be projected from the life of a people; to be appreciated, it must be familiar, must partake of the nature and habits of the people for whom it is intended, and must reflect their life, history, hopes, and aspirations.

The committee regret to be compelled to observe the deficiency in this particular, so far as the decorative work in the Capitol extension has progressed. An eagle and the national flag may be discovered occasionally amidst the confusion of scroll-work and mythological figures presented to the eye; but the presence of conventional gods and goddesses, with meaningless scrolls and arabesques, albeit they may be wrapped in the "red, white, and blue," will never suggest to the American, as he wanders among the halls and committee rooms, any idea to touch his heart or to inspire his patriotism. He beholds nothing to remind him of the grandeur of his country, its origin or history; nothing to make him seek these halls again to refresh his memory of the deeds of the good and great, who won the independence and secured the liberties, or expanded the boundaries of a great nation! Should he seek an explanation from those who are manufacturing the cumbrous levities which everywhere appear through the building, he will be eminently fortunate should he find among them one who speaks the English language. The committee think that upon this great work the artists and the workmen of our own country should be employed; that every stone in the edifice should be laid and every line and figure within its halls and passages should be the work of our own citizens. There are many points connected with the decorative, but apparently belonging to, or included within, the architectural departments of the building which suggest criticism; ornaments which are out of place; elaborate bronze mouldings screwed upon wooden panels; heavily ornamented bronze railing upon private stairways, all extremely expensive, and placed where ornamentation seems unnecessary. But this committee will not go into particulars in selecting points for criticism where doubtless there has been an honest effort to produce effect. An inspection of the work will suggest the idea to every one that there has been the most prodigal liberality in placing upon its interior much which the good taste of those who come after us will dispense with or replace. At all events, enough has been said to prove that there is a propriety in changing the present system and of establishing a new mode of conducting the work. The committee are of

opinion that, in the adoption of such new mode, the establishment of an Art Commission which shall suggest a general plan of decoration and embellishment is the first step to be taken, and that upon the rendition of a report by such a commission to the next Congress, there may be pointed out a correct system which can be pursued with true economy by being pursued at leisure and according to the will of Congress expressed from time to time. In this way the broadest field of competition may be opened to American artists and great encouragement given to American art.

The opportunity to afford this stimulant to the exertion of American artists should not be permitted by Congress to pass away without improving it. The walls and niches of this Capitol should be dedicated to American art, and Genius should be invited to lavish upon them its brightest conceptions, always, however, illustrative of American history, which is rich in noble exploits by sea and land. Upon these walls should be recorded the heroic deeds which the nation loves to remember. In these niches should be collected the statues of American statesmen and patriots who would speak from the silent marble, and by their mere presence animate the councils of the living and inspire them to virtue and honor. These are legacies worthy of being transmitted to the future, and which the future will demand of us. The statesman and the artist should join in this noble work and permit no profanation of it. We are writing now a history which should be true, as it will be handed to posterity. Let it illustrate American life.

APPENDIX "A."

MEMORIAL.

To the Senate and House of Representatives of the United States:

The memorial of the artists of the United States, in convention assembled, respectfully represents:

That your memorialists appear before your honorable bodies to solicit for American art that consideration and encouragement to which they conceive it to be entitled at the hands of the general government.

They cannot but deem it a matter of deep regret that so important an element of national progress should have received as yet so limited a share of attention at the hands of our legislators, and that opportunities for the illustration of our country's history, rich as it is in material for the pencil and the chisel, should have been, with a few exceptions, denied to those whose province it is, and whose pride it would be, to embody in enduring and beautiful forms, for the benefit of our own and future generations, all that is glorious and ennobling in our history, character, and life, as a people.

Your memorialists submit that the time is now at hand when we may assume a position in the world of art as enviable and exalted as that which we have attained in our social and political relations; that the capacity of our artists to accomplish this glorious end is abundant, and that the appropriate field for its development and exercise is in the adornment and completion of the noble structures now being reared by the nation for the nation's use.

A liberal, systematic, and enlightened encouragement is, they believe, all that is needed for the establishment of a national art that shall worthily illustrate the genius of our institutions; and they cherish the earnest hope that the golden opportunity now afforded, in the erection of spacious and costly buildings, will not be neglected, but that, by the wisdom of the means adopted by your honorable bodies, an impulse may be given to the cause of American art, the beneficent and ennobling influences of which shall extend to our remotest posterity.

Your memorialists respectfully urge, that the great end proposed, viz: "the advancement of art in the United States," may be most surely and completely attained by the establishment of an Art Commission, composed of those designated by the united voice of American artists as competent to the office, who shall be accepted as the exponents of the authority and influence of American art, who shall be the channels for the distribution of all appropriations to be made by Congress for art purposes, and who shall secure to artists an intelligent and unbiased adjudication upon the designs they may present for the embellishment of the national buildings.

Your memorialists believe that the appointment of such a commission would be hailed throughout the country as an evidence of a just and generous appreciation by your honorable bodies of the claims

and interests of art, and would secure for it a future commensurate with the exalted character of the history and the times which it is its purpose to commemorate.

REMBRANDT PEALE, Philadelphia.
 J. R. LAMBDIN, Philadelphia.
 H. K. BROWN, New York.
 JOHN CRANCH, Washington, D. C.
 W. D. WASHINGTON, Washington, D. C.
 J. M. STANLEY, Washington, D. C.
 THOMAS G. CLEMSON, Maryland.
 HORATIO STONE, Washington, D. C.
 PETER BAUMGRASS, Washington, D. C.
 JOHANNES A. OERTEL, Washinton, D. C.
 WILLIAM S. TIFFANY, Baltimore.
 C. SCHUESSELE, Philadelphia.
 GEORGE W. CONARROE, Philadelphia.
 PHINEAS STAUNTON, New York.
 WILLIAM HEINE, New York.
 FRIDOLEN SCHLEGEL, New York.
 WILLIAM H. RINEHART, Baltimore.
 JOHN SARTAIN, Philadelphia.
 HENRY D. SAUNDERS, Philadelphia.
 THOMAS BALL, Boston.
 HENRY F. DARBY, New York.
 M. B. BRADY, New York.
 ALBERT BIERSTADT, Boston.
 A. B. DURAND, *P. N. A.*, New York.
 TH. S. CUMMINGS, *V. P. N. A.*, New York.
 HENRY PETERS GRAY, New York.
 CHARLES C. INGHAM, New York.
 J. B. STEARNS, New York.
 J. R. BREVOORT, New York.
 WILLIAM HART, New York.
 E. W. NICHOLS, New York.
 J. H. SHEGOGUE, New York.
 JAMES A. SUYDAM, New York.
 S. R. GIFFORD, New York.
 JOHN W. EHNINGER, New York.
 TREVOR McCLEERY, New York.
 R. M. PRATT, New York.
 JAMES H. CAFFERTY, New York.
 T. ADDISON RICHARDS, New York.
 R. W. HUBBARD, New York.
 MARCUS WATERMAN, New York.
 WILLIAM INGRAM, New York.
 H. WHITE, New York.
 A. D. SHATTUCK, New York.
 C. L. ELLIOTT, New York.
 ALANSON FISHER, New York.
 GEORGE A. BAKER, New York.

JOHN POPE, New York.
ALBERT F. BELLOWS, New York.
EDWARD D. E. GREENE, New York.
W. P. MORGAN, New York.
WILLIAM OLIVER STONE, New York.
JAMES H. WRIGHT, New York.
A. B. MOORE, New York.
J. D. BLONDELL, New York.
RICHARD M. STAIGG, New York.
LOUIS R. MINOT, New York.
MARMADUKE PIERCE WILSON, New York.
J. S. PERKINS, New York.
N. B. KITTELL, New York.
JOHN WILLIAMSON, New York.
D. M. CARTER, New York.
A. F. TAIT, New York.
GEORGE INNESS, New York.
E. GREATOR, New York.
GEORGE H. HALL, New York.
JAMES L. DICK, New York.
THOMAS SULLY, Philadelphia.
GEORGE C. LAMBDIN, Philadelphia.
ISAAC L. WILLIAMS, Philadelphia.
W. H. FURNESS, Jr., Philadelphia.
ALEXANDER LAURIE, Philadelphia.
C. H. SCHMOLZE, Philadelphia.
SAMUEL SARTAIN, Philadelphia.
WILLIAM T. RICHARDS, Philadelphia.
PAUL WEBER, Philadelphia.
W. F. JONES, Philadelphia.
J. A. BAILLY, Philadelphia.
EDWARD STANCH, Philadelphia.
AUGUSTUS WEGNER, Philadelphia.
A. HOHENSTEIN, Philadelphia.
ALBERT W. JANVIER, Philadelphia.
STEPHEN J. FERRISS, Philadelphia.
RUSSELL SMITH, Philadelphia.
A. B. ROCKEY, Philadelphia.
JOSEPH B. HOWELL, Philadelphia.
E. D. MARCHANT, Philadelphia.
HENRY A. MARCHANT, Philadelphia.
EDWARD BOWERS, Philadelphia.
W. SANFORD MASON, Philadelphia.
E. WOOD PERRY, Jr., Philadelphia.
JAMES K. HARLEY, Baltimore.
JOHN ROBERTSON, Baltimore.
F. B. MAYER, Baltimore.
THOMAS W. WOOD, Baltimore.
C. D. SAUERIVEIN, Baltimore.
HUGH NEWELL, Baltimore.
ALFRED J. MILLER, Baltimore.

WILLIAM S. TIFFANY, Baltim re.
 G. H. FULLER, Montgomery, Alabama.
 E. F. BILLINGS, Montgomery, Alabama.
 ALBERT BIERSTADT, New Bedford.
 G. H. CUSHMAN, Boston.
 CHARLES HASKINS, Washington, D. C.
 CHARLES A. ALEXANDER, Washington, D. C.
 W. ALLAN GAY, Boston.
 W. WILLARD, Boston.
 HAMMATT BILLINGS, Boston.
 THOMAS S. SPEAR, Boston.
 SAMUEL L. GERRY, Boston.
 SAMUEL W. GRIGGS, Boston.
 ALFRED ORDWAY, Boston.
 M. F. FOLEY, Boston.
 WALTER M. BRACKETT, Boston.
 THOMAS M. JOHNSTON, Boston.
 S. P. HODGSON, Boston.
 D. C. JOHNSTON, Boston.
 JOHN POPE, Boston.
 FREDERIC D. WILLIAMS, Boston.
 M. G. WHITLOCK, Boston.
 JOSEPH AMES, Boston.
 E. A. BRACKETT, Boston.
 J. A. JACKSON, Boston.
 M. WIGHT, Boston.
 H. C. PRATT, Boston.
 ALONZO HARTWELL, Boston.
 P. STEPHENSON, Boston.

APPENDIX "B."

*Extracts taken from the testimony given before the English commission
by Sir Martin Archer Shee.*

Question. Then assuming that painting in this style (in oil upon canvas) is resorted to for the purposes of embellishing the new houses of Parliament, is there any particular plan by which you think it could be carried out?

Answer. I should suppose that the illustration of the principal events of our history, and the commemoration of the illustrious characters which its annals display, would furnish the means.

Question. How would you select the artists?

Answer. That is a question of some difficulty. My general impression with respect to the promotion of the fine arts was, that competition was the best means of forwarding their improvement; but experience has proved that the means of obtaining a competent tribunal to decide upon the merits of the competitors are not easily to be found in this country; so many difficulties stand in the way, so many obstructions,

so many interests to be considered, so many persons to be consulted, that I think it is hardly possible to obtain a competent tribunal under any circumstances.

Question. If the selection of artists were accomplished by means of competition, would there not be some danger also that artists of established reputation might decline to enter into competition?

Answer. It is that view that induces me to believe that competition will not succeed in this country, because artists of established reputation will not risk that reputation by coming before a tribunal which they do not think competent to decide upon their merits, and which may very materially injure the reputation which they have obtained, by selecting persons of inferior capacity and incompetent to the object required.

191. Mr. Ewart.] Why do you think the case of this country an exception to the case of other countries in which competition may be useful to the public?

Answer. From the difficulty of forming a competent tribunal to decide as to their merits. It is a question which has been in my mind, influenced by the result of experience. I was so firmly impressed with the advantages resulting from competition, that in a slight work which I formerly published, I stated a plan which turned entirely upon that mode of decision; but I have since then been perfectly convinced that artists of established reputation and great eminence will not submit to any tribunal which will be likely to be performed in this country for such a purpose. * * * * *

Question. In the best periods of modern art the best artists were not selected from the great body of artists by means of competition?

Answer. I believe they were not, as far as my knowledge extends; there was no competition in the case of the appointment of Raffaello to paint the Vatican, nor in the appointment of Michael Angelo.

Question. Were they not selected and employed by reason of the reputation they had gained?

Answer. I believe so.

Question. And when so selected therefor, left to employ their genius upon the work which they were called upon to execute with entire freedom?

Answer. I should think that would be the rational mode of proceeding. * * * * *

Question. Might there not be two classes of artists: for instance, one of known and established reputation who might be employed upon particular portions of the building, and left entirely to the efforts of their own minds and genius; and another class of artists of less known and less established reputation, who should be selected for employment in this building through the medium of competition?

Answer. Most certainly; I see no objection whatever to such a plan.

APPENDIX "C."

The general object of the commission considered in relation to the state and prospects of the English School of Painting. Extracts from the papers of C. L. Eastlake, esq., Secretary.

As the commission is understood to take up the present inquiry where the committee on the fine arts appointed by the House of Commons in 1841 left it, it will be proper, by way of introduction, to recapitulate the leading opinions expressed in the report of that committee.

It was there observed that "the chief object aimed at by the appointment of the committee" was "the encouragement of the fine arts of this country;" that it was "requisite that a plan should be determined upon, and that as soon as practicable, in order that the architect and the artist or artists to be employed may work not only in conjunction with, but in aid of each other; that thus the abilities of both would be exerted for the decorations of so eminently national a building; and at the same time encouragement beyond the means of private patronage would be afforded, not only to the higher walks, but to all branches of art." The report proceeds to recommend the employment of fresco painting in the decoration of the new houses of Parliament, suggesting, however, the necessity of further information and inquiry.

The appointment of the commission has fully secured the latter, and the general objects of the committee have been recognized in the notice respecting a competition, already prepared for publication, under the sanction of her Majesty's commissioners.

It is here proposed to consider the question of the decoration of the houses of Parliament with reference to the state and prospects of the English School of Painting.

And first it is to be observed that, although "all branches of art" may be entitled to the consideration of the commission, historical painting is not only generally fittest for decoration on a large scale, but is precisely the class of painting which, more than any other, requires "encouragement beyond the means of private patronage." The want of such encouragement has long been regretted, not only by professors, but by all who have turned their attention to the state of painting in England; a proof that the promotion of historic art is an object of interest with a considerable portion of the public.

The inference is not unimportant; for an already existing estimation of the higher aims of art is in itself an earnest of success. The desire which has been manifested for historical painting would not be entitled to attention if it could be traced to a passing influence, or to a disposition to imitate what had been achieved in other countries, since this could only lead to the adoption of superficial qualities, betraying, sooner or later, the absence of a vital impulse. Such attempts would be the more likely to be ineffectual, if a different style, however humble, really corresponding with the national taste, were at the same time cultivated with marked success.

The history of art is not wanting in examples of schools and of periods, with regard to which it might be a question whether a sudden demand for historical would have been a boon to the artists or to the lovers of art.

The Dutch school of the seventeenth century might be adduced as a case in point.

It may here be remarked that, even where the direction of national taste is favorable to the cultivation of historical painting, the peculiar difficulties of that branch of art must sometimes place it in unfavorable contrast with inferior departments more commonly practiced, and in which a relative perfection is more commonly attained.

The disadvantages resulting from this contrast are peculiar to modern times; at the revival of art, and during its progress to excellence, the efforts in the grander style were not in danger of being undervalued or stimulated to injudicious rivalry by such a comparison. No school exclusively devoted to indiscriminate imitation then existed. The present influence of such schools and examples may partly account for and excuse the occasional fastidiousness of modern amateurs with regard to efforts in historical painting, and may render a consistency of style more difficult for the historical artist.

These admissions with regard to the present difficulties of the highest style of art cannot, however, render it necessary to vindicate its abstract claims; the sole question for consideration now is, whether in this country, and at this time, there exists grounds for hoping that historical painting could be cultivated with success, and whether it would awaken a more general interest if it were duly encouraged by the State.

That the actual estimation of this department of art has direct reference to the moral wants of our own nation is further proved by the repeated exertions of individuals in proposing plans for the promotion of the higher style of art, by the generous encouragement occasionally extended to its votaries by others, but, above all, by the efforts of the artists themselves.

For it must always be borne in mind that the aims of the artists are not to be considered as accidental predilections apart from the public feeling, but as representing a portion of that feeling.

However variously modified by other influences, the formative arts must always express the manners, the general taste, and, to a certain extent, the intellectual habits of the nation in which they are cultivated; the chief conditions with regard to the last being that the objects of mental interest should be analogous to the pursuits of taste, and at the same time familiar to that portion of the public to which the arts are addressed. But to whatever extent the mind or manners of a nation may be communicable to its productions in art, the result is to be looked for rather in general tendencies than in degrees of technical excellence, and is especially to be sought where controlling influences, even of a salutary kind, are at least likely to interfere with the free expression of national taste.

Thus the indications in question are not so evident in religious subjects, in which a common education and long consecrated themes have tended to elevate to a common standard the taste of the civilized

world ; nor are they so distinctly manifested even in certain subjects of local interests, such as the acts of illustrious patriotism has everywhere supplied, and which pre-suppose a uniformly ennobling influence. The proper and peculiar tendency, the physiognomy, so to speak, of national taste, is to be detected in more spontaneous aims, in the direction which the arts have taken, when their course has been unrestrained, save by the ordinary influence of the intellectual and moral habits of society.

It might be interesting to trace the connexion between the arts and national culture and character under such conditions ; but the general truth of the view above taken has been so often dwelt on by the historians of art that it must be unnecessary to adduce examples of such a connexion where circumstances must render it more than commonly direct. If it were proposed to compare the English School of Painting (as regards its general tendency) with the schools of other countries, it would, however, be just to consider the direction of taste in the latter when art has not been employed in the service of religion and patriotism, for it is under these circumstances that painting has been cultivated in England. The result of such a comparison would tend to vindicate the aim and character of the English school.

But the inference from the above statement, which is more immediately applicable to the present question, is, that the efforts of the English artists in the higher branches of their profession are to be regarded as an evidence of the tendency of taste in a considerable portion of the public, and it remains to observe that both the efforts and the taste may be almost irrespective of the common relation between demand and supply, since the due encouragement of the higher branches of art may be "beyond the means of private patronage." This apparent contradiction of a moral demand for a particular class of art, existing independently, in a great measure, of its usual consequences—the actual employment of those who, with due encouragement, might respond to it, is explained by the fact that the decoration of public buildings, with a view to moral or religious purposes, has always been necessary for the formation of a school of historical painting. The history of art shows that whatever may be the extent of general education, the service of religion or the protection of the state is indispensable, at the outset at least, for the full practical development of the highest style of painting. Thus formed and thus exercised, historic art lives and is progressive ; but with the aid, however liberal, of private patronage alone, either its aim becomes lowered or its worthier efforts are not sufficiently numerous to react on the general taste.

To many it may appear unnecessary to assert the capacity of the painters or of the public for the cultivation or appreciation of elevated art. But it must be remembered that while the great stimulus and support of public employment is wanting, the exertions of the artists are gradually compelled into other directions, and some observers, looking at this result alone, may draw erroneous inferences from it.

Many sometimes hastily conclude that pictures of familiar subjects, which have of late years been predominant and deservedly attractive, represent the universal and unalterable taste of the nation.

Such observers might, however, at the same time, remark that the productions in question oftener approach the dignity of history than the vulgarity of the lowest order of subjects, and either by the choice of incidents, or by their treatment, still attest the character of the national taste. The evidence of an intellectual aim in familiar subjects may be therefore considered as an additional proof that the artists of England want only the opportunity which those of other nations have enjoyed in order to distinguish themselves in the worthiest undertakings. But to place this question in its proper light it will be necessary to take into consideration the peculiar circumstances under which the English school has been formed. * * *

The experiment of private patronage seems to have been then fairly made, and the gradual change to reduced dimensions appears to have been the consequence of the insufficient demand for larger works, arising in a great degree from the limited size of English dwelling-houses. Hence the execution of small historical pictures—a practice recommended by the occasional example of the best masters of every school. But when the subject is dignified, smallness of dimensions cannot consistently be accompanied by smallness of treatment. Minute imitation is not found in Coraggio's Gethsemane, nor in Raphael's Vision of Ezekiel, diminutive as they are. The breadth of manner, which is indispensable in such elevated themes, is not, however, essential in familiar subjects, and hence when specimens of both styles, similar in size, but widely different in their technical conditions, are placed together, the impression produced by so marked a contrast is unsatisfactory, without reference to the difference of subject. * *

The foregoing considerations may warrant the conclusion that the grandest style of art is best displayed in large dimensions. It will also follow that the treatment of subjects fitted for such dimensions must tend to ennoble the style and taste of the artist. * *

Among the various styles of painting, and the modifications attending them, it is here necessary to consider such as are fit for the permanent decoration of public buildings, and the subjects which may be appropriate in the present case. In ministering to the tastes of individuals, the arts may be as varied in their character as the varieties of mind, or of the same mind at different moments may seem to demand; but in addressing, or being supposed to address, a nation, their language requires to be always dignified. If mere magnificence and splendor have been sometimes confounded with grandeur, from the reigning taste of a period, the general intention has been, nevertheless, the same.

The evidence of this homage to the public (in its largest sense) is not less necessary in the imitative arts than in architecture, which in all ages has marked its national and public monuments with a grandeur (or what has been intended for it) not merely depending on the purpose of the edifice, but addressed, as it were, to the ideal spectator. * * *

* * * The ancients and the Italians of the middle ages seem to have considered that obedience to laws, respect for institutions, and the emotions for patriotism are likely to be kept alive when public buildings produce the impression of which they are capable, by

being duly displayed—when the poetry of the architect can affect the imagination.

The imitative arts, applied to public purposes, require dignity of style. The term “monumental” has been, of late years, employed to designate works in painting and sculpture which are of universal or of national interest. Their sources are religion, patriotism, and poetry. Their purpose is to edify, by the highest examples and the highest associations, to stimulate the love of national glory, and to minister to the pleasures of the mind.

The variety of these general objects supposes a corresponding latitude in the artist’s aim, which is at last defined by the character of that section of the public which is supposed to be addressed. The works of art which the refined citizen of Athens selected for academies and places which the learned alone were supposed to frequent, often exhibited recondite subjects from the poets; but the portico, which was the daily resort of the common people, was adorned with a painting of the battle of Marathon.

The edifice now in progress at Westminster is strictly and officially called “Her Majesty’s Palace at Westminster, in which Her Parliament is wont to assemble.” It is, therefore, a royal palace permanently devoted to the purposes of government and legislation; and the circumstance of the Parliament, or Lords and Commons meeting within its precincts, represents the combination of those elements of power with those of the Throne, which is characteristic of the English constitution.

In the introduction of painting and sculpture for the decoration of such an edifice, it might therefore be presumed that the subjects should relate to this constitutional union of the powers of the state, the situation and office of the several halls proposed to be decorated suggesting the order and application for such subjects.

The history of the fine arts, employed as in this case, shows that it has always been considered desirable to connect a patriotic or moral object with that of mere decoration. The condition of a pleasing effect on the eye is to be considered indispensable; but the artist has, in the most approved examples, combined this with a higher gratification. The fact that on many occasions a hall or gallery permanently decorated with works of art might, like the rooms of the Vatican, serve merely as a passage, is not to be considered of weight, for the same argument would excuse incompleteness of execution and all kinds of defects. Excellence is supposed to be required, and the perfection of painting consists in more than a momentary appeal to the eye. As a guide at least to the artist, it may be assumed that it should be his aim to produce an impression on the minds of those whom he is supposed to address, and it is this principle which it is conceived should partly regulate the choice of subjects.

Let it be supposed, for a moment, that Westminster Hall is to be adorned with paintings. The place, being always open to the public, might contain a selection of subjects from British history, especially such as relate to warlike achievements, the vastness of the empire, and great commercial and civil events; subjects calculated to inspire the citizen with loyalty, patriotism, and enterprise. The guard-room, or

ante-chamber to the robing-room, might present subjects relating to the defence of the throne, the laws, and the country ; subjects exhibiting the military power employed to protect.

In St. Stephen's Hall, and the corridors adjoining, the subjects might serve to define the constitutional rights and duties, and to exhibit the acts and services of churchmen, statesmen, and warriors, in their relation to the government of the country, and as loyal subjects. In the robing-room the artist might endeavor to define the power and privileges, the virtues and duties, with which the throne is invested.

The Victoria Gallery offers, perhaps, the fullest scope for a comprehensive design in an elevated style of art. If so adorned, the fittest theme seems to be the abstract one of legislation ; if devoted to British history, the most appropriate subjects might be the acts of the sovereigns of England ; or subjects relating to the extended dominion, the power and greatness of the nation.

APPENDIX "D."

Observations on the principles which may regulate the selection of subjects for painting in the palace at Westminster, by Mr. Hallam.

The determination of her Majesty's government and of Parliament to restore the buildings appropriated to the estates of the realm in a manner befitting the national grandeur and the dignity of their functions has not unnaturally suggested a wish that, with architectural splendor, the excellencies of other arts, especially those of painting and sculpture, might be combined. The commission to which I have the honor to belong was expressly appointed to consider how far this might be carried into effect for the encouragement of the fine arts in England ; but these words seem to intimate a still further and, it may be said, a still more important object than the immediate one of giving additional magnificence to the new houses of Parliament—the object of promoting the fine arts in this country, and raising its general estimation as a school of painting and sculpture among mankind.

It has long been a common remark that our English painters—and it is chiefly to painting that I would now confine myself—with extraordinary merits in many departments of their art, have not very greatly cultivated, at least in large pictures, that higher style which we commonly call historical, though comprehending more than actual history. Few who know what some have done will ascribe this to natural deficiency of genius adapted to such work ; but it would not be difficult to assign several real causes adequate to explain the fact. It is only with one that we can here have to do, and that is abundantly sufficient. The general size of private houses excludes pictures of large dimensions, while our public buildings, though frequently containing apartments capable of receiving them, have either not been applied to such a purpose, or, as has too frequently been the case, have been occupied by works of such inferior merit or upon such unin-

interesting subjects as to check any desire that might have arisen to see the art of painting more extensively put in requisition. With respect to churches, it is evident that partly on account of expense, and partly from other impediments, unlikely to be removed, they have in few instances become the depositories of valuable works of art. It is, therefore, an important circumstance that, in the plan of the new edifice which is rising under the superintendence of Mr. Barry, several apartments will exist of sufficient magnitude to receive larger pictures than can easily find admittance into private houses, and of as great excellence as the artists of this kingdom can produce.

The competition invited last year for cartoons, and which is generally supposed to have drawn forth no inconsiderable degree of ability in the highest line of art, that of historical invention and composition, was founded on no other principle.

If, therefore, the development of native genius in historical painting, and the production of what is absolutely best, ought to be principally encouraged as well for the sake of the splendor of the new palace, as of placing our successful artists on a proper footing, it seems that we should be cautious of restraining too much their talents by any limitation incompatible with their fullest exercise. And here, as it appears to me, a certain difficulty may arise. No one probably would wish to treat the buildings connected with the assembly of the legislature, and to be consecrated, we hope, hereafter by so many improving associations, as mere galleries, where nothing in the works of the painter or sculptor is to be in harmony with the general design. Such would, I conceive, be the worst of two extremes, did it appear necessary to choose any extreme at all. In our halls of Parliament, or as we approach them, let us behold the images of famous men; of sovereigns, by whom the two Houses of Peers and Commons have been in successive ages called together; of statesmen and orators, to whom they owed the greatest part of their lustre, and whose memory, now hallowed by time, we cherish with a more unanimous respect than contemporary passions always afford. It is for this reason that I do not much interfere with sculpture; though it is not evident that the ideal of that art, which of course is its noblest object, need altogether to be excluded. Nor do I discuss the propriety of historical portraits.

But in large works of painting, either in fresco or oil, but especially in the former, it does appear to me more than doubtful whether the artist should in all instances, and in all parts of the building, be confined to our British history. It is impossible for me not to feel my own incompetency to offer any opinion on an art which, as such, I so little understand. Still, there are truths as to historic painting which lie almost on the surface. It requires no skill to have observed that in the selection and management of subjects a painter will prefer, wherever his choice is truly free, those which give most scope for the beauties of his art. Among these we may of course reckon such as exhibit the human form to a considerable degree uncovered; such as throw into action and excite the sympathy of the spectator by the ideas of energy or of grace; such as intermingle female beauty, without which pictures, at least a series of them, will generally be unattractive; such as furnish the eye with the repose of massy and broad draperies, which

is strictly a physical pleasure, and for want of which we soon turn from many representations of modern events, however creditable to the artists; such as are consistent with landscape and other accessories.

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APPENDIX "E."

Letter on the same subject, from the Right Hon. Viscount Mahon to the Right Hon. Sir Robert Peel.

I beg leave to return you my best thanks for the two interesting papers which you have been pleased to afford me an opportunity of reading. The same kindness which prompted their communication will, I hope, excuse some commentary of my own upon them.

Towards Mr. Hallam I entertain the highest respect and regard, and I sincerely distrust, as I ought, my own judgment on any historical subject which he sees in a different view. But when I find even so eminent an authority declare, in reference to our new houses of Parliament, that "it does appear to him more than doubtful whether the artist should in all instances, and in all parts of the building, be confined to our own British history," I must own how entirely and how strongly I venture to dissent from that opinion.

First, let us consider for a moment what "our own British history" really is. It is the narrative of a race who, from a low and humble origin, roaming as painted savages over their barren hills, or exposed to sale for slaves in the market-place of Rome, have gradually, in the course of ages, attained perhaps the very first place among the nations; who at home have known how to combine, beyond any other people, the greatest security to property with the greatest freedom of action; who have given tokens such as no lapse of time and no violence of revolution could efface, of valor, of virtue, and of eloquence, of scientific discovery, and artistic skill; who abroad have tried their strength against every power, and have never been found inferior; who have proved as successful in the glorious rivalry of knowledge and benevolence. In the Indian empire which we have founded we now rule over 120,000,000 of subjects or dependants, the largest population, except in China, which the world has, I believe, yet seen combined beneath a single sway. In the colonies which we have conquered, as in Canada, we have seen rapidly increased wealth and welfare, the results to them of their own subjugation. It is not long since I had occasion to investigate what might be the population of Canada at the time of its conquest by Wolfe. I found it stated at less than 60,000; and I observed that this was almost exactly the number which Mr. Buchanan, in his report to Sir Charles Bagot, of December 31, 1842, states as the total of the emigrants into the province during the last twelve months; so that, after eighty years of English possession, the accession to its population in one year is actually equivalent to the whole of its population previous to that

period ! It would require a volume instead of a letter, were I to go through, however rapidly, the whole series of facts such as these ; but I ask, is it now contended that a course of eighteen centuries, tending to such results, can be really so barren to the artist ? Can it be, that after exploits whose fame has filled the globe, and which have conquered or colonized no small portion of it, our history affords no sufficient materials for the adornment even of a single edifice amongst us ?

I cannot but observe that the two instances, Canada and India, which from amongst others I have quoted as tokens of our greatness, might also, perhaps, afford practical answers to the artistic objections urged by Mr. Hallam. He deprecates the painting of battles since "the introduction of field artillery and scarlet uniforms ;" but surely in Canada the death-scene of Wolfe, when withdrawn from the field and mortally wounded, with, I think, only one officer by his side, the young general (he was but thirty-three) surveyed the distant conflict with a dying, yet a steadfast gaze, is a subject worthy of employing, and I trust it may obtain, a far greater artist than West. Thus, also, when Mr. Hallam justly points out the scope to a painter, afforded by "such subjects as exhibit the human form to a considerable degree uncovered," he will, I am sure, acknowledge (for no man could more ably describe) that the long train of our Indian successes in the arts of war and peace would supply the advantage he desires by the delineation of the graceful and well-formed, but scarcely clad, Hindoos.

Mr. Hallam goes on to observe with great truth, that for any attractive series of historical pictures it is essential to "intermingle female beauty ;" and this, in his opinion, a strict adherence to our authentic records will not adequately supply. "For," he adds, "the most beautiful and interesting women in English history must be painted, if at all, upon the scaffold." Here, again, I cannot have the honor and pleasure (for I feel it as both) to concur with him. Are we to have any state trials ? If we have, could there be a nobler female figure for an artist than in the scene which another member of your commission has well described :

" There, on that awful day,
Council of friends all human help denied ;
All but from her, who sits the pen to guide,
Like that sweet saint who sat by Russell's side,
Under the judgment seat."

Thus, also, why need any bygone differences on a royal line, now extinct, prevent us from delineating the young countess of Nithisdale liberating her husband from the tower in 1716, (as her own beautiful letter describes it,) or the young Flora MacDonald saving Charles Stuart from his pursuers in 1746. Again, how rich is Scottish history before the union in deeds of female heroism ! Remember, for example, the scene previous to the assassination of James the First, when Catharine Douglas thrust her arm, instead of a bolt, into the staple of the door, and bid the conspirators without burst it open if they would, after this announcement. But supposing that Mr. Hallam desires to confine us in our argument strictly to England, and to actions in which royal blood bears some part, although I see no reason

for either limitation; yet even when I would venture to allege, amongst others, Boadicea; Queen Eleanor, of Guyenne, saving her husband's life by sucking the poison from his wound; Queen Margaret, of Anjou, holding forth her children, and confronting the robber in the forest, (an instance allowed by Mr. Hallam as the exception to his rule;) Anne Boleyn in her bridal array; Lady Jane Gray at her youthful studies; Mary, Queen of Scotland, and heiress presumptive of England, on her landing from France; Queen Elizabeth at Tilbury Fort; Henrietta Maria in the civil wars; Miss Lane assisting Charles the Second in his concealments and disguises, after the battle of Worcester; the flight of Queen Mary of Este, and her infant son, in 1688; Queen Mary the Second receiving the news of the battle of Boyne; Queen Anne giving her assent to the act of union with Scotland; and last, not least, the first council of Queen Victoria,—it may be objected that, in some of these instances, as with Queen Elizabeth and Queen Anne, the "female beauty" required by Mr. Hallam may not be found. But when a queen is introduced, there need be no lack in paintings, any more than in reality of blooming ladies of the bed-chamber and maids of honor to attend her.

I admit, indeed, to Mr. Hallam, that there would be a sameness and monotony in a long series of mere parliamentary scenes, debates, divisions, and royal commissions; but surely it would be easy to select some striking and obvious events that break the even current, as, for instance, the seizing the mace by Oliver Cromwell, or the dying scene of Lord Chatham.

But, further still, if our subjects are once to step beyond our own pale, what are those subjects to be? Mythological, allegorical, or drawn from the history of some foreign, and possibly at the time of painting, hostile nation. Whichever of these plans is proposed, will, I think, be open to considerable difficulties. I should not, indeed, object to an allegory, if that allegory were clearly and distinctly applied to some period or passage in our history. Thus, for example, the figure of Astræa for the reign of Edward the First, the "English Justinian," as Blackstone calls him. But as to Mr. Hallam's general idea of subjects, independent of, and unconnected with, English history for the intended frescoes and paintings of the new palace at Westminster, I can only say that my judgment, little as it may be worth, is decidedly adverse to the suggestion; and that, had I any vote to give or any influence to exert upon this question, I would no more consent to admit foreign science to decorate a British House of Parliament, than I would an alien to sit among its members. * * * *

I have confined myself in this letter, as Mr. Hallam in the argument which I have controverted, to political and military subjects, but I can see no good reason why we should exclude from our range of choice the honors achieved amongst and conferred upon us, either in literature or science. To give only an instance, could there be a nobler subject for any artist than Milton, in his blindness, dictating *Paradise Lost* to his daughters?

CARMICK AND RAMSEY.

MARCH 3, 1859.—Laid on the table, and ordered to be printed.

Mr. BILLINGHURST, from the Committee on the Judiciary, submitted the following

VIEWS OF THE MINORITY.

Minority report of the Judiciary Committee on the message of the President touching the law passed for the relief of Carmick & Ramsey.

The following message of the President of the United States has been referred to the Judiciary Committee, to be by them considered and reported on, viz:

“To the House of Representatives:

“I herewith transmit reports from the Secretary of the Treasury and Postmaster General, with the accompanying papers, in compliance with the resolution of the House adopted December 23, 1858, requesting the President of the United States to report ‘what action, if any, has been taken under the sixth section of the Post Office appropriation act, approved August 18, 1856, for the adjustment of the damages due Carmick & Ramsey; and if the said section of said law yet remains unexecuted, that the President report the reasons therefor.’

“JAMES BUCHANAN.

“WASHINGTON, January 7, 1859.”

The law referred to in the resolution of the House is as follows, viz:

“SEC. 6. *And be it further enacted*, That the First Comptroller of the Treasury be, and he is hereby, required to adjust the damages due to Edward H. Carmick and Albert C. Ramsey, on account of the abrogation by the Postmaster General of their contract to carry the mail on the Vera Cruz, Acapulco, and San Francisco route, dated the 15th of February, 1853, to adjudge and award to them, according to the principles of law, equity, and justice, the amount so found due. And the Secretary of the Treasury is hereby required to pay the same to said Carmick & Ramsey out of any money in the treasury not otherwise appropriated.”

Approved August 18, 1856.

This law found Mr. Whittlesey in the office of First Comptroller. He took some steps preliminary to its execution. Then he says:

“On the publication of the President’s message, at the 3d session

of the 34th Congress, and the documents that accompanied it, it was found that the Postmaster General had presented this case to Congress apparently for its revision. He went into an argument, somewhat elaborate, the purport of which appeared to be that the subject was not understood by Congress when the law was passed requiring the Comptroller to adjust the damages Carmick & Ramsey had suffered by the abrogation of the contract, as was erroneously asserted in the act, as the Postmaster General substantially alleged; and to enable Congress to be enlightened in the matter, the better to repeal or qualify its former legislation, his report and argument were accompanied by such documents as he deemed to be necessary. * * *

“As the Postmaster General had thus brought the subject before Congress again, as in the nature of an appeal from its former decision, I thought it to be proper to suspend action, so far as this office was concerned, until the matter should be disposed of by Congress, or an adjournment should take place without rescinding its former proceedings in the premises.

“Congress having adjourned, by its limitation, on the 3d of March, without any action on Postmaster General Campbell's appeal, and the claimants being anxious for a decision in the case, the correspondence was renewed, and arrangements were being executed for taking the testimony. A witness came from New York with some books and papers containing entries of expenditures; but inasmuch as witnesses were in New York whose testimony was important, it was deemed best to have all the witnesses in that city give their depositions there. In several other cases referred to, the decision of the Comptroller by Congress to adjust and settle the damages that mail contractors had sustained, by reason of the abrogation of their contracts by the Postmaster General, the Post Office Department had been represented by its agents, or persons designated for that purpose, or interrogatories and cross-interrogatories were filed. In some instances the Solicitor of the Treasury was authorized by the Postmaster General, or by the President, to act on the behalf of the department. Not doubting the same authority had been or would be given in this case, I had several communications with him about taking testimony, that the convenience of the department and of the claimants might be consulted.

“On or about the 28th day of March Horatio King, esq., First Assistant Postmaster General, called at the office of the First Comptroller of the Treasury, and inquired of me respecting the examination of the claim of Messrs. Carmick & Ramsey, and in the course of the conversation he asked what were my views of the law; whether there was a contract, and whether, if there was, it was abrogated by the Postmaster General. I replied that Congress had decided both points in the affirmative, and that it was not for me to say the decision was wrong; that I had, under the law, to adjust the damages, and to adjudge and award them on the principles presented in the law.

“He contended to the contrary, and spoke of the hasty and irregular proceedings of Congress towards the close of the session, and said the subject was not understood. To which I replied that I thought the law was explicit, and that if its plain import could be changed for the reasons mentioned by him, they equally operated against all laws that

were passed at the close of the session, which included most of the important laws; but that in this case I did not think his representation was correct, for the law was in harmony with the report of the committee, in regard to the two points mentioned.

“As to my remark on the contents of the report, he said that was nothing; that it was not drawn by the committee, nor understood. Some further remarks were made, and he asked me if I would not have the opinion of the Attorney General taken. To that inquiry I replied in the negative.

“This is the substance of the conversation between us. The Attorney General, on the 30th of March, wrote a letter, which was received on the 1st of April, advising me that Messrs. Carmick & Ramsey's claim for carrying the mail from Vera Cruz to Acapulco had been referred to him by the Postmaster General, and he requested that action be suspended until he had time to examine it. He was so good as to say, if I desired it, he would hear my views with pleasure. I called before and after several times, without being able to see him; but if an interview had been obtained I should not have presented any views in the matter of the proceedings in this case.

“On the 3d of April Mr. King wrote to me, that the case of Carmick & Ramsey having been submitted to the Attorney General, the Postmaster General wished the preparation of the case to be suspended until the opinion of the Attorney General was obtained. Although I considered the measure to be without a precedent, and a dangerous usurpation, I deemed it to be best, as the President had accepted my resignation, to take effect on the first of May, not to proceed to take the testimony, as had previously been contemplated. It is my belief that this is the first case since the existence of this government where the head of a department has interfered to arrest the execution of a law by a person specially appointed by Congress to carry it into effect.

* * * * *

“On the 17th I received a letter of that date from the Hon. Howell Cobb, Secretary of the Treasury, enclosing a copy of Mr. Attorney General Black's opinion, under date of the 7th, in regard to the law for the relief of Carmick & Ramsey, together with the copy of a letter from the Hon. Aaron V. Brown, Postmaster General, to Mr. Cobb, dated the 16th.

“Mr. Cobb says: ‘I take it for granted that you will regard it as conclusive upon the questions considered and decided by the Attorney General.’

“Mr. Brown says: ‘I have informed the First Comptroller of the Treasury that, inasmuch as the case turns upon the simple question whether the contract was abrogated by the Postmaster General, which has been answered by the Attorney General in the negative, I have decided not to become a party to any investigation having for its object the adjustment of any damages in the matter.’

“If the opinion of the Attorney General was deemed by the Secretary of the Treasury to be conclusive on the Comptroller, he would deem it to be conclusive on him, and of course he would not issue his warrant to pay any award I might make in favor of the claimants.

“If I rightly comprehend the Attorney General in the case of Richard W. Thompson, he lays down the case to be, that a statute must be construed by its words, without resorting to any evidence, proof, or circumstances.

“In the case of Carmick & Ramsey, if I do not wholly misunderstand his remarks, he examined testimony to show that the contract was not abrogated by Postmaster General Campbell; nay, he must have relied very much upon the declarations of Mr. Campbell. In the case of Mr. Thompson he places much reliance upon the fact that a session of Congress having intervened without repealing the law for his relief, on the ground of the omission of an important clause, as it was alleged, and from this circumstance he concluded that Congress considered the allegation unfounded in fact.

“In the case of Carmick & Ramsey he does not mention the appeal that Postmaster General Campbell made at the third session of the thirty-fourth Congress, from its previous decision to relieve them, and that Congress adjourned without amending the act or repealing it. If the conclusion is pertinently drawn in the case of Thompson, that the adjournment of Congress is evidence of its being satisfied with the law for his relief, I am unable to see why the same conclusion may not be drawn in the case of Carmick & Ramsey.

* * * * *

“The act asserts (as I hold) three prominent facts, and I shall arrange them in the following order:

“1. That a contract existed, of such a nature and character as to involve the interests of Messrs. Carmick & Ramsey.

“2. That such contract was abrogated by the Postmaster General.

“3. That by reason of such abrogation Carmick & Ramsey sustained damages.

* * * * *

“The period of my service being limited to the 1st of May, and the Postmaster General having declined in his letter of the 11th, received on the 13th, to ‘become a party to any investigation having for its object the adjustment of any damages in the matter,’ and not having funds applicable to taking testimony on the part of the government, nor for employing counsel to cross-examine the witnesses that might be examined by the claimants, and not being permitted to leave the office without deranging and delaying the current business, I found it impracticable to carry into effect the intention of Congress.”

Here ends Mr. Whittlesey’s official relation to the law. Thus much of his statement is deemed necessary as a part of the history of doings since the enactment of the law. What has been done by Mr. Whittlesey’s successor will sufficiently appear hereinafter.

For the harmony and perpetuity of our government, it is indispensable that the executive, legislative, and judicial departments should, respectively, maintain their perfect independence, permitting no encroachments. Their absolute independence is enjoined by the Constitution; and aside from the *right* which should interchangeably command respect for that independence, it should be observed in that comity alone which is due from one branch of the government to

another. This independence must, of necessity, be self-sustaining, repelling all encroachments.

This House, vigilant in guarding the constitutional landmarks of that legislature of which it is a component part, in the courteous form of a resolution, sent its message to the President. But the President has been pleased to regard the resolution literally, rather than in the spirit of its intent. The undersigned indulge the hope that the President does not intend to defy Congress.

The House asked the *President* why this law was suffered to remain unexecuted; in other words, why *he* suffered his subordinate to resist the will of Congress. It is among the duties imposed by the Constitution upon the President that "he shall take care that the laws be faithfully executed." Instead of communicating any reasons of his own to Congress, (avoiding the inquiry entirely,) he has transmitted to the House a mass of matter, comprising two hundred and twenty-one printed pages, from the files of the Comptroller's office, much of which is irrelevant to the question, and other portions of which might well have arrested the attention of the President as suggestive of a fit occasion for the exercise of his power to remove.

If the House had desired the *Comptroller's* reasons for his conduct, the resolution would have been directed to *him*, and not to the President.

This message cannot be regarded as a "compliance" with the resolution of the House. It appears, from an inspection of the papers accompanying it, that the Postmaster General most strenuously resisted the passage of the law in question; that the judgment of Congress was against him, and the law was enacted notwithstanding his opposition, and upon ample information of the merits involved. It further appears, that after the passage of the law the Postmaster General, the Attorney General, and the Secretary of the Treasury, combining, obtruded the weight of their official positions upon Mr. Whittlesey, then Comptroller, to prevent him from executing the law; that he, with commendable independence, protested against their unlawful interference; but before he had time to assess the damages, as required by the law, he was succeeded in office by Governor Medill. It further appears that Governor Medill has proved a more pliant instrument for the use of meddlesome superiority, and under such influence sets the law of Congress at defiance. But these matters, one and all, fall far short of furnishing any reason, or even excuse, for the non-execution of the law on the part of subordinates; much less can they avail the President.

If the undersigned were to permit themselves to go behind the law to consider questions that led to its enactment, they might in one brief sentence dispose of all sophistry by which its execution is attempted to be defeated, and that would be this: Congress, in recognizing the abrogation by the Postmaster General, merged the conditional into an absolute contract—in one word, approved and abrogated the same. But this kind of investigation is neither necessary nor proper, nor would it comport with the dignity and self-respect of Congress to determine its action by such investigation in the present state of the question.

This law placed the government, with reference to Carmick & Ramsey, in the position of a defendant who had been sued in assumpsit and suffered judgment interlocutory to pass against him by default, and an inquest ordered to assess the damages. It does not authorize Carmick & Ramsey to institute a suit against the United States before the First Comptroller, nor has it any analogy to the institution of a suit to try any issue. Their memorial to Congress was the institution of their suit. Congress was the tribunal to try the issue, and that tribunal proceeded in the trial and adjudged and determined every question involved, even to damages; but as the requisite *data* for ascertaining what damages they should recover were not before Congress, it was referred to the First Comptroller for his assessment of those damages. The law in question is a truthful paraphrase of any common law judgment record where the merits have been adjudged by the court in the plaintiff's favor and an inquest ordered to assess the damages. The rule of action by which the Comptroller is governed under this law has been settled and undisputed, wherever the principles of the common law prevail, since time immemorial. The duty and power of the First Comptroller are simply those of a jury of inquest—not more, not less.

The Judiciary Committee of this House expressed its views of this law, and of the duties of the First Comptroller, at the first session of the present Congress, in the following language, viz :

“The memorialists represent that this law yet remains unexecuted, although they have made repeated efforts to have it carried into effect, and they ask relief at the hands of Congress.

“The foregoing law is plain and clearly expressed. If Messrs. Carmick & Ramsey can obtain no relief under this law, then no legislation can aid them. By it Congress has already declared—

“First. That a contract was entered into, February 15, 1853, with Carmick & Ramsey to carry the mail on the Vera Cruz, Acapulco, and San Francisco route.

“Second. That said contract was abrogated by the Postmaster General.

“Third. That damages are due Carmick & Ramsey on account of said abrogation.

“Fourth. That the First Comptroller of the Treasury be and is required to adjust said damages, and to adjudge and award to Carmick & Ramsey, according to principles of law and equity and justice, the amount he shall so find due.

“Fifth. The Secretary of the Treasury is required to pay the same to Carmick & Ramsey whenever the amount shall be determined by the First Comptroller.

“What more can Congress do? Can they use more pointed words of command to the Comptroller?

“The memorialists represent, that in 1856 the Postmaster General succeeded in arresting the execution of the law. Your committee are slow to believe that the Comptroller, an accounting officer designated by Congress for this particular duty, should or could allow of any interference with his duties. In the execution of this law the First Comptroller has no superior. He is independent, not only of the

Postmaster General, but of the Secretary of the Treasury, and even the President himself.

“For the purposes of this law he is an officer of Congress, and, *pro tanto*, independent of all executive interference. In one point of view only can the President's power be invoked. It is his duty to see that the laws are faithfully executed. If the First Comptroller has refused, or should refuse, to carry out this law, the President, knowing it, should cause him to be removed, and a person appointed who would obey the law.

“Congress has taken its share of responsibility in declaring that a contract existed, was abrogated, and that damages are due. Whether it has wisely or unwisely met and discharged that responsibility is not a question that can be reviewed now by the First Comptroller, the Secretary of the Treasury, the Postmaster General, or the President. That is a closed question. The President has approved the law.

“In the opinion of your committee, it is the duty of the First Comptroller to execute the existing law.”

With great assurance, the present Comptroller thus summarily attempts to nullify this law, viz :

“Although, in my conclusions, I do not reach the question of damages at all, &c. * * * Repudiating the idea that Congress had determined by law the facts in this case, or intended to do so, it was my duty, first, to inquire whether the contract referred to in the law was so abrogated by the Postmaster General as to make the United States liable to the contractors in damages for such abrogation, and, that being decided in the negative, I had no further investigation to make; and it remains for me only to decide that I find nothing due from the United States to Messrs. Carmick & Ramsey under the contract aforesaid.”

This action of the Comptroller was on the 11th August, 1858. On or about the 6th of August, upon the application of the claimants' attorney, the Comptroller appointed the 17th of that month for a hearing of the case. In disregard of this, and to the delusion of the claimants, he proceeded *ex parte* to make the above report, six days before the day appointed by him to take up the case. This act alone should forfeit his office.

The present Comptroller seeks to justify his contumacy by misrepresenting the demand of the claimants, making it frightfully enormous ! The rule of damages was correctly stated to the Comptroller by Mr. Reverdy Johnson, the claimants' attorney, in his letter of June 16, 1858, which accompanies the President's message.

On the 23d of August, 1858, Messrs. Carmick & Ramsey, by their attorneys, made a formal and earnest appeal to the President, as the ultimate resort for the execution of laws, for redress in the premises. That appeal remains unheeded. The undersigned cannot understand that the true line of executive conduct permits the retention of any man in office to the sacrifice of his clearly defined official duties. The office should ever be held in higher regard than the man.

If a subordinate officer of the government is to be permitted to defeat the execution of a law by setting up his judgment against the policy of the law, or by readjudicating questions which the law itself

has foreclosed, or upon the assumption that Congress acted hastily and unadvisedly in enacting the law, then legislation becomes worse than a farce. And when such acts on the part of subordinates are sanctioned or permitted by the President, questions of grave import are presented, demanding of Congress its wisest consideration. The self-respect, the dignity, and even the constitutional power of Congress are involved. It is of but little avail that Congress pass laws, if they are to be disregarded by the executive branch of the government.

Inasmuch as Congress has no power to remove faithless and incompetent officers, except by invoking the impeaching power, the undersigned believe that substantial justice will be done in the premises, so far as it is in the power of Congress conveniently to mete out the same, by pronouncing a censure upon the First Comptroller, and devolving the duties imposed by this law elsewhere. They therefore recommend the adoption of the following resolutions.

C. BILLINGHURST.
CHARLES READY.

Resolved by the Senate and House of Representatives in Congress assembled, That the First Comptroller of the Treasury, in failing and refusing to assess the damages due Carmick & Ramsey, as required of him in the 6th section of an act entitled "An act making appropriations for the service of the Post Office Department during the fiscal year ending the thirtieth of June, eighteen hundred and fifty-seven," approved August 18, 1856, has acted in contempt of the legislative will, and incurred this expression of censure.

Be it further resolved, That the power devolved on, and the duty required to be performed by, the First Comptroller of the Treasury, in the 6th section of the act entitled "An act making appropriations for the service of the Post Office Department during the fiscal year ending the thirtieth of June, eighteen hundred and fifty-seven," approved August 18, 1856, be, and the same are hereby, transferred to, and vested in, and shall hereafter be performed by, the First Auditor of the Treasury.

JOSEPH DAVIS.

MARCH 3, 1859.—Laid on the table and ordered to be printed.

Mr. GREENWOOD, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the petition of Joseph Davis, praying compensaion for supplies furnished volunteers in Oregon in the year 1853, have had the same under consideration, and have instructed me to report adversely.

The petitioner claims that he furnished provisions and ammunition to the troops in Oregon in 1853, amounting to the sum of \$790 80. To sustain the claim he presents the certificate of a Mr. Drew, who represents himself to have an A. A. U. S. Q. M. and C. S. There is no satisfactory excuse given why this claim was not presented to the commissioners sent out to Oregon under the act of 1854 to collect these claims. The Secretary of War, when this claim was presented to him for allowance, very properly required the claimant to file his reasons (if any he had) why his claim was not presented to the board. There is another point connected with this claim which your committee think worthy of notice.

Mr. Drew seems to have conducted all the correspondence between the claimant and his attorney; and, from a careful examination of his statements, your committee are unable to reconcile those statements with his certificate of September 1, 1853, in which he positively states that the vouchers had been rendered, and subsequently states that the war accounts had been made up before this claim was rendered. The Secretary of War required explanation upon another point, which your committee deem worthy of notice. It seems, from the evidence and papers on file, that the sum of \$1,911 had been paid to Messrs. Fowler & Davis. The Secretary called upon the claimant to show that he was not the Mr. Davis, of the firm of Fowler & Davis, to whom this allowance was made. No such explanation had been given or attempted. The evidence being in nowise satisfactory, your committee see no reason why Congress should take cognizance of this class of claims, and which was referred to the Secretary of War by the act of July 15, 1854.

SENECA G. SIMMONS.

MARCH 3, 1859 —Laid on the table and ordered to be printed.

Mr. STANTON, from the Committee on Military Affairs, made the following

REPORT.

The Standing Committee on Military Affairs, to whom was referred the petition of Seneca G. Simmons, beg leave to report:

That the petitioner represents, that in the spring of 1847 he was performing the duties of commissary of subsistence to the American army at Matamoras, in Mexico, and that for want of a "safe" he was compelled to keep the funds placed in his hands for the purchase of supplies in a strong wooden box, which was kept in his quarters, which was broken open and robbed of \$1,500 during his temporary absence.

He asks that a bill may be passed requiring the accounting officers of the Treasury to credit his account with that sum.

The subject was investigated by a military commission appointed by General Cushing, soon after the occurrence. A copy of the record of the proceedings of that commission, with the evidence given before it, is before the committee.

In the opinion of your committee, the evidence is not sufficient to establish the facts set forth in the petition.

The finding of the commission is, that "they find no evidence that will justify them in attaching any suspicion to any particular person or persons; but are brought to the conclusion, from the evidence elicited, that the rooms were occupied as commissary's quarters, and the chest illy adapted for the purpose, as they do not appear to afford sufficient security to the government property."

No opinion is given as to whether the money was in fact lost, as alleged by the petitioner, or not; and if so, whether by his fault or negligence, or otherwise. The evidence shows that the chest was fastened by an ordinary padlock; that the rooms in which it was kept were left open every day, without any guard or any other person being in them for an hour at a time, three times every day, while the commissary and his clerk, and assistant, were at their meals.

The breaking was first discovered by a negro servant, who informed the commissary of it in the morning, before he had risen from his

bed. The chest was then examined, and the money was ascertained to be missing.

Whether it was done on the previous day or night is not known. It may have been done a day or two previous to the discovery. The facts do not warrant any imputation of collusion on the commissary, though there is no negative evidence to exempt him from the imputation.

But in the opinion of the committee, there could have been no difficulty in fastening the chest more securely, and watching and guarding it more closely. The loss resulted from the negligence and carelessness of the petitioner, and in the opinion of the committee he ought not to be exempt from liability for it. The committee therefore ask to be discharged from the further consideration of the subject.

DANIEL WRIGHT.

MARCH 3, 1859.—Laid on the table and ordered to be printed.

Mr. HUMPHREY MARSHALL, from the Committee on Military Affairs,
made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Daniel Wright, praying relief on account of the abrogation of his contract for the construction of the first section of the military road from Astoria to Salem, in Oregon Territory, report:

That Daniel Wright entered into a contract with the engineer in charge to construct a section of road from Astoria to Salem, in Oregon Territory, at a stipulated price per measured mile. The contract contained the following clause:

“This contract subject to the approval of the Secretary of War. Should the department disapprove of it, the work done by the contractor will be paid for at the rates agreed upon.”

The contract was entered upon by Mr. Wright in February, he having made large purchases of animals and implements to prosecute the work to completion within the time limited by law, and by the 1st of May succeeding he had completed one and eleven hundredths miles in a satisfactory manner. At this point he was notified that the Secretary of War disapproved of the contract, and he was paid for the work he had performed according to the stipulations of his contract. The engineer also purchased from him some, if not all, of the property he had prepared wherewith to prosecute the work. Mr. Wright suggests that the portion of the road he completed was more difficult of construction than any other embraced in the contract, and subjected him to much greater cost than the other terminus of the line would have cost had he commenced there. His application is to be paid by a *quantum meruit* for what he has done, instead of by the contract. He would have been so entitled to be paid had he not entered into a contract to be satisfied with payment at the contract rate. Having so agreed, and having so accepted payment, he is entitled to no further relief. The committee report adversely to the memorial.

DANIEL WRIGHT

Mr. Thompson Marshall, from the Committee on Military Affairs,
made the following

REPORT

The Committee on Military Affairs, to whom was referred the petition
of Daniel Wright, praying relief on account of the obstruction of his
contract for the construction of the Astoria road, in Oregon Territory,
from Astoria to Salem, in Oregon Territory, report:

That Daniel Wright entered into a contract with the engineer in
charge to construct a section of road from Astoria to Salem, in Oregon
Territory, at a stipulated price per measured mile. The contract
contained the following clause:

"This contract subject to the approval of the Secretary of War
should the department disapprove of it, the work done by the con-
tractor will be paid for at the rates agreed upon."

This contract was entered upon by Mr. Wright in February, he
having made large purchases of animals and implements to prosecute
the work to completion within the time limited by law, and by the
1st of May, 1854, he had completed one and eleven hundredths
miles in a satisfactory manner. At this point he was notified that
the Secretary of War disapproved of the contract, and he was paid for
the work he had performed according to the stipulations of his con-
tract. He also purchased from him some, if not all, of the
property he had proposed, otherwise to prosecute the work. Mr.
Wright reports that the portion of the road he completed was more
durable of construction than any other entered in the contract, and
estimated to be much greater cost than the other portions of the line.
He reports that he had commenced there. His application is to be
paid for a guarantee made for what he has done, instead of by the
contract. He would have been entitled to be paid had he not
entered into a contract to be satisfied with payment at the contract
rate, having so agreed, and having so accepted payment, he is en-
titled to no further relief. The committee report adversely to the
petition.

CHARLES H. WILGUS.

MARCH 3, 1859.—Laid upon the table, and ordered to be printed.

Mr. HUMPHREY MARSHALL, from the Committee on Military Affairs,
made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Charles H. Wilgus, praying compensation for property lost at Tampico, Mexico, during the war with Mexico, report:

That Charles H. Wilgus, the memorialist, is a native of the United States, but resided near Tampico during our war with Mexico, where he was "a co-proprietor with his wife" of a rancho used as a dairy farm.

He complains of spoliations on his property, committed by American volunteers who were encamped near his place in the winter of 1846-'47, but says these men were not under orders nor justified by their officers. They were not in the line of their duty, and were simply trespassers, and were personally responsible. It is not perceived how a government can be rendered legally or morally responsible for the conduct of individuals, though they are soldiers, who, in violation of their duty and orders, may commit trespasses upon the property of persons in whose vicinity they may be posted. They would be punished if they could be detected; but, in the absence of all attempts to detect the offenders, it cannot be admitted that Mr. Wilgus has a good claim against this government for trespasses committed by individuals who were not acting under the authority of the flag or the orders of a superior officer, but who were confessedly "a party of soldiers separating themselves from the command."

The memorialist has presented a bill of particulars specifying the items of damage, but he has not introduced a single witness who testifies to any particular item. They aver their general estimate to range from "about \$2,500" to "near and not less than \$3,000," which the memorialist himself, though submitting an itemized account amounting to \$3,112, only brings himself, in his deposition before the alcalde of Tampico, up to the general statement that he sustained a loss of "more than \$2,500."

The Committee on Military Affairs do not regard this claim as good, because the extent of the interest of the memorialist is not so stated as

to render it certain to what portion of the damages he would be entitled. 2d. Because he has not proved specifically the amount of any particular item of damage. 3d. Because a general statement that his damages in gross amounted to not less than \$2,500 is too vague to found thereon a specific verdict against the government. 4th. Because the government is neither morally nor equitably bound to compensate a citizen residing in an enemy's country in time of war for the destruction of property when committed by individuals separated from the command, who are simply pillaging or depredating of their own wrong and in violation of orders and without the authority or presence of the flag to which they belong. Such a precedent would render the government responsible for every horse and cow and calf that may have been killed while our army was in Mexico, for every house that was burned, for every personal assault that was sustained, and for every species of wrong the inhabitants may charge to volunteers who belonged to the service. Such a rule does not obtain in any service, and is not practiced upon by any government.

The committee report adversely, and ask to be discharged from the further consideration of the memorial.

JAMES D. COBB.

MARCH 3, 1859.—Laid on the table and ordered to be printed.

Mr. PENDLETON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of James D. Cobb, submit the following report:

The memorialist alleges that, in the year 1813, he was a first lieutenant in the regiment of light artillery of the United States army, stationed at Greenbush, in the State of New York; that during the same year he was tried by a military tribunal, styling itself a court-martial, and, being found guilty of the charges preferred, was, by its sentence, dismissed from the army; that this court was pronounced "illegal" by an order from the War Department, and an order issued granting him a new trial and convening a court-martial for that purpose; that subsequently this order was revoked, and it was declared that "Greenbush be considered a separate command, so far as relates to courts-martial hitherto held," and that consequently "it was not necessary to institute any further proceedings in the case of" the memorialist; that his name was thereupon dropped from the list, in pursuance of the sentence of said court; that subsequently, in 1829, Congress, in the belief that this court was illegally constituted and its action without authority, passed a bill allowing arrearages of pay and emoluments from the period of his dismissal to the date of the reduction of the army in 1821. He contends, upon this statement of his case, "that he is now an officer in the corps of artillery," and prays, inasmuch as the executive has refused to recognize him as such, that Congress will pass a law causing "his name to be restored to the rolls of the army," "allowing the promotion to which he is entitled by the rules of the service," "directing the Secretary of the Treasury to allow and pay him the balance due him as a captain of light artillery from the time he was entitled to promotion, in the year 1813, till the regiment was incorporated with the corps of artillery, in 1821," or "take such action as the nature and justice of his case may seem to demand."

The great number of applications made by this memorialist to the executive and Congress for relief has induced the committee to examine his case with great care. The facts seem to be these:

In the year 1813, Colonel Larned, then in command at Greenbush, a cantonment merely, within the limits of a military district, convened a military tribunal, styled in the order "a general court-martial, to consist of five members, for the trial of such persons as may be brought before them." Mr. Cobb, then a lieutenant of light artillery, was tried before this tribunal on charges of disobedience of orders and unofficer-like conduct, was convicted, and sentenced to be cashiered. This finding and sentence were reported to the Secretary of War, who, on the 29th day of January, 1814, notified Colonel Larned that the proceedings of the court-martial were "illegal, as you had, at that time, no authority to institute general courts-martial," and that he was thereby "authorized to order a general court-martial for the trial" of Cobb and others, "the proceedings of which must be transmitted to the Secretary of War for his decision." On the 3d of February, 1814, Cobb was ordered to report, without delay, to Colonel Larned, at Albany, "who has orders to institute a court-martial in your case."

A correspondence ensued between Colonel Larned and the department, in which the former set forth the inconvenience which would result from the decision that the court was illegal, alleging that sentences had been passed and executed, and, in one instance, in pursuance of its findings, a man had been shot for repeated desertions. On the 9th of March, 1814, Colonel Larned was notified by the department "that the President has decided that Greenbush be considered a separate command, so far as relates to courts-martial hitherto held. This decision, you will observe, is a confirmation of the several sentences of general courts-martial held under your orders, and will render unnecessary any further proceedings in the cases of Lieutenant Cobb," and others. And on the 23d day of May, 1814, Mr. Cobb was notified by the same authority "that the President of the United States having approved the sentence of the general court-martial which dismissed you from the service, you are not considered as belonging to the army of the United States." His accounts were settled, and his name was dropped from the list.

In the year 1815 Congress passed "an act fixing the military peace establishment of the United States," by the fifth section of which it was provided "*that the President of the United States cause to be arranged the officers, non-commissioned officers, musicians, and privates of the several corps of troops, now in the service of the United States, in such manner as to form and complete out of the same the corps authorized by this act, and cause the supernumerary officers, non-commissioned officers, musicians, and privates to be discharged from the service of the United States.*"

On the 17th of June, 1815, the President executed this law by issuing a "general order, announcing the army register for the peace establishment, including the officers provisionally retained in service, until circumstances shall permit their discharge." Mr. Cobb's name does not appear on this list of officers retained either permanently or provisionally.

In the year 1821 Congress passed another "act to reduce and fix the peace establishment of the United States," by the provisions of

which the ordnance department was merged in the artillery. The twelfth section of this act is in the very words of the fifth section of the act of 1821 above quoted. In execution of this law the following general order was issued on the 17th of May, 1821:

"In pursuance of the act of Congress entitled 'An act to reduce and fix the military peace establishment of the United States,' passed March 2, 1821, the President has directed that the following list of officers, the following organizations of regiments and commands, with the following distribution of troops, shall constitute the peace establishment of the United States from and after the 1st of June next."

* * * * *

"All officers whose names are not included in the above list must consider themselves disbanded on the 1st of June next, except quartermasters, commissaries, and storekeepers, charged with the safe-keeping of public property, who will remain in service until specially relieved from their accountability."

Mr. Cobb's name did not appear in this list of those retained in the service.

In 1825 Mr. Cobb presented a petition to Congress, declaring amongst other things "that he was an officer in the army until the regiment of light artillery in which he served was consolidated with the corps of artillery," in 1821, by the act above quoted, and praying that Congress "will pass a law directing the accounting officers of the Treasury Department to allow and pay him the amount of his pay and emoluments as an officer of light artillery up to that period." And in 1829 he presented again the same or a similar petition. The Committee of Military Affairs, to which this latter petition was referred, reported favorably, on the ground that Cobb was an officer until the consolidation of his corps with the light artillery in 1821; and on the 11th of February, 1830, a bill was passed both Houses, directing the Secretary of the Treasury to pay to James D. Cobb, "late a first lieutenant in the regiment of light artillery," "the full amount of pay and emolument of a first lieutenant of light artillery from the day when the said James D. Cobb was last paid to the time when the regiment of light artillery was incorporated with the artillery by the act of March 2, 1821," in pursuance of which Mr. Cobb was paid, not only his regular pay and emoluments, but also the three months' extra pay allowed to all who were disbanded by the order of the President in 1821. These are the facts material to the case of Mr. Cobb.

Article 75 of the rules and articles of war provides that "no officer shall be tried but by a general court-martial;" and article 65 provides that "any general officer commanding an army, or colonel commanding a separate department, may appoint general courts-martial whenever necessary." Greenbush, in 1821, when Colonel Larned, then in command of that post, convened the court-martial, was a cantonment merely, within the limits of a military district commanded by a separate officer. Colonel Larned was not "a general commanding an army, nor a colonel commanding a separate department," and therefore had no authority to convene a general court-martial, and by none other could Lieutenant Cobb, a commissioned officer, be tried. It seems very clear to the committee that the tribunal which assumed

to try, convict, and cashier Mr. Cobb was convened without legal authority, and that its proceedings were utterly null and void.

Being without legal authority at the time of its convocation, throughout the whole period of its existence, and at its adjournment, it was wholly without jurisdiction, and no subsequent order of the executive, purporting to change either the character of the post or the rank of the officer calling the court, could have a retrospective operation and impart validity to its proceedings. Neither the declaration that "Greenbush be considered a separate command so far as relates to courts-martial hitherto held," nor the approval by the President of the sentence, sufficed to remove from the court the taint of illegality or to invest its proceedings with any authority. The status of Mr. Cobb in the army was therefore not rightfully affected by virtue of this court-martial.

Without admitting or denying the power of the President, of his own motion, in the absence of an act of Congress, to cancel the commission of an officer in the army and to discharge him from the service, it seems equally clear to the committee that this power, if assumed to be exercised at all, must be exercised directly and avowedly as such; that the order of dismissal must issue in pursuance of an intention to call into exercise that specific power; that an order approving the sentence of a court-martial, which appears in the end to be illegal, cannot be held to be the exercise of this arbitrary power; and consequently that the order confirming the proceedings of the court-martial at Greenbush, and the notification to Cobb, dated May 23, 1814, above cited, "that the President of the United States having approved the sentence of the general court-martial which dismissed you from the service, you are not considered as belonging to the army of the United States," failed to operate as a legal discharge from the army.

But by the act of 1815 a reduction was made in the army, involving the necessity of discharging from the service some of the officers; and upon the President was imposed the duty and the power of selecting those who should be retained. The President performed his duty, made the selections, issued new commissions, and thus, in fact, constituted a new army. Those persons only were members of this army whom the President had chosen and commissioned, all others were excluded, Mr. Cobb with the rest. It may be that Mr. Cobb was considered out of the army by reason of the proceedings of the court-martial, and therefore beyond the circle from which the President could legally make his selections, and that thereby he was prejudiced. This fact, if proven, could not affect his position. It could not make him an officer in the new army any more than a rumor of his death, believed by the President, but in fact unfounded, could have had that effect. The selection by the President was the pre-requisite to admission into the new army, or, if the term be preferred, to retention in the old army. If this pre-requisite failed, no matter for what reason, the party was not in the service.

The selections were made by the President on the 17th June, 1815. Mr. Cobb was not among the number, and consequently on that day ceased to be an officer of the army; until that day he was entitled to his rank and pay. The committee has not deemed it necessary to

inquire whether, if retained in active service from April, 1814, the date of the confirmation of the sentence of the court-martial, to June, 1815, the date of the reduction, he would have received promotion. The only compensation which could be made would be in computing his pay and emoluments according to his rank, and the committee is well assured that the amount paid him under the act of 1830 far exceeds the sum to which he would be entitled on that basis.

The committee, differing so entirely in its conclusions from the committees which had charge of this case prior to the passage of the law of 1830, does not feel called upon to make other comment upon their action than this, that no allusion whatever is made in their report to the law of 1815, and the reduction under it.

The committee having arrived at the foregoing conclusion report that Mr. Cobb is entitled to no relief, and therefore ask to be discharged from the further consideration of his memorial.

JAMES MOUNTS.

MARCH 3, 1859.—Laid on the table and ordered to be printed.

Mr. PALMER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition and accompanying papers of James Mounts, report:

That he claims to have been badly wounded at Lundy's Lane, and furnishes a proof thereof, his own affidavit, which says he was captured on the battle-ground and taken to Fort George, Canada; while the affidavit of another soldier, Joseph Hardy, of another regiment, wounded in same battle, says Mounts was wounded in said battle and taken to the *American hospital* at Black Rock; whence, *soon after*, he was taken prisoner by the British troops and carried to Canada. This does not agree with Mounts' statement, nor is it supported by the letter of his captain, Foulke, who says Mounts was reported *missing* the morning after the battle. But the physicians swear *positively*, both to the fact of Mounts being wounded at the said battle, in the line of his duty, and to his total disability in consequence thereof—facts hardly within their knowledge. Their statements are not dated, and appear to be in the handwriting (as do also the petition of Mounts, and his and Hardy's affidavit) of the magistrate before whom all the proof in the case was taken, and who seems also to be the agent prosecuting the claim. There are no other witnesses to the affidavits, nor are the interlineations and erasures therein noted. The committee are of opinion that a pension ought not to be granted.

JAMES MOUNTS.

Statement of James Mounts, made to the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of James Mounts, report:

That he claims to have been badly wounded at Lady's Lane, and to have been a member of the 1st Regiment, 11th Maine, which says he was captured at the battle-ground and taken to Fort George, Canada; while the affidavit of another soldier, Joseph Harty, of another regiment, states that he was wounded in said battle and taken to the American hospital at Black Hook; whence, soon after, he was taken prisoner by the British troops and carried to Canada. This statement agrees with Mounts' statement, nor is it supported by the affidavits of Harty, who says Mounts was reported missing the morning after the battle. But the physicians were positively, both to the fact of Mounts being wounded at the said battle, in the line of his duty, and to his total disability in consequence thereof—James hardly being able to walk. Their statements are not dated, and appear to be the handwriting (as do also the petition of Mounts, and the affidavits of Harty) of the magistrate before whom all the proceedings were taken, and who seems also to be the agent prosecuting the claim. There are no other witnesses to the affidavits, nor are the affidavits and answers therein noted. The committee are of opinion that a pension ought not to be granted.

EDSON FESSENDEN, CONSERVATOR OF WILLIAM
CROMPTON.

[To accompany bill S. 394.]

MARCH 3, 1859.—Ordered to be printed.

Mr. REILLY, from the Committee on Patents, made the following

REPORT.

The Committee on Patents, to whom was referred Senate bill No. 394, entitled "A bill for the relief of Edson Fessenden, conservator of William Crompton," report back the same to the House without amendment, and recommend its passage. The committee adopt the report made to the Senate by the Committee on Patents and the Patent office, which is as follows:

The petitioner alleges that William Crompton is the inventor and patentee of an improvement in the power loom for weaving figures or fancy goods, for which he obtained a patent for fourteen years on the 25th of November, 1837. He devoted himself for several years to the introduction of the invention to the notice of inventors until the year 1849, when he became deranged, and was placed in the insane hospital at Hartford, where he has remained ever since, hopelessly insane. On the 29th of November, 1849, Edson Fessenden, the petitioner, was duly appointed conservator of the person and estate of the said Crompton. It is further alleged that, upon application to the Patent Office, an extension was granted for a term of seven years, for the benefit of the inventor, it appearing to the satisfaction of the Commissioner of Patents that the invention was one of much value, and that the inventor had not received an adequate remuneration therefor. The extended term of the patent, it is stated, will expire on the 25th of November, 1858, and the petitioner asks that Congress will further extend the patent for the benefit of the inventor.

An account is presented representing the profits of the patent to have been, during the fourteen years of its original existence, \$5,930; and during the six years of its extension, which have expired, \$19,015; making a total profit of \$24,945. The invention is admitted to be of much value, and testimonials from manufacturers are produced certifying thereto.

The application of the petitioner is recommended to the favor of Congress by a number of the manufacturers using the Crompton improvement. A copy of the representation they make is appended to this report.

On the other hand, it has been represented that the charges in the account exhibited to the committee for time and expense of Crompton are exaggerated, and that the actual clear profit of the inventor has been more than is represented. It was also complained that the assignment to Crompton of the right to use the patent, and the refusal of the right to other machinists, operates as a monopoly in favor of one machine shop.

The committee having called upon the conservator of the lunatic Crompton for information of the value of his estate and the number of his family, he filed a statement, which is annexed, from which it appears that his estate amounts to \$11,568, and that his family consists of six children, three of whom are provided for from the estate of the lunatic.

It was further stated that his physical condition was healthful and vigorous, but that his mental malady was considered incurable.

The facts present a feature unusual in these cases of application for extension. The patent right has been enjoyed twenty-one years, and, as a general rule of action, the committee would not advise an extension beyond that period; but in this case the committee venture to recommend a different and exceptional action.

The patentee, it is admitted, has invented a very useful improvement in the loom. He has thus made a valuable contribution to human comfort and public industry. By an affliction of the same Providence which inspired him to the discovery, he has been stricken with lunacy, and thus is disabled from providing for his own support and that of his family.

For nine years of the term of his patent, his lunacy has entirely unfitted him to manage the interests of his patent, and it is reasonable to presume that its productiveness has been much less in the management of a stranger than would have been the case if he could have superintended its use for himself. Thus, by a misfortune wholly unavoidable, the value of the exclusive right which the law allows has been materially diminished.

It has seemed to the committee that those who are enjoying the benefit and convenience of the improvement which the skill and mental application of the now unfortunate maniac produced might very properly contribute to the comfort of the remnant of his darkened days, and provide in his stead for the dependent part of his family.

The generous representation of so many of the manufacturing establishments using the improvement seems to invite this course and confirm its propriety.

The conclusion of the committee is to allow, in consideration of the peculiar circumstances of the case, an extension for another term of seven years, which, it is believed, will, together with the sum now held in trust for him, provide a proper fund for his comfortable maintenance. But, in order to prevent the grant of renewal from operating

as an inconvenient restriction upon the business of machinists, it is provided that all machinists shall have the right to use the improvement upon paying the moderate fee prescribed in the bill for the privilege.

The committee report the accompanying bill and recommend its passage.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The undersigned, manufacturers of fancy goods at the places set opposite their names, respectfully memorialize your honorable body and show :

That they have for a number of years used, and are now using, in their business aforesaid, figure or fancy power-looms of the kind patented to William Crompton on the 25th of November, 1837, and are well acquainted with its operation.

That they consider it a loom of great practical excellence, and one which, by its extensive introduction, has done much to develop the fancy goods business in this country.

That they are aware of the distressing circumstances of Crompton's life, his pecuniary troubles, and his present insanity, and also of the fact that since the patent has been extended by the Commissioner of Patents, his son, George Crompton, has been most energetic in prosecuting the business of manufacturing and selling the looms, and has given great satisfaction to manufacturers, and much revived and extended the reputation of the looms by his attention and skill in building them.

That, from their knowledge of the history of George Crompton and his father, in connexion with the loom, they are satisfied that neither of them, nor both together, have received from the patent more than a very inadequate compensation for the time, labor, ingenuity, and expense required for the invention of the Crompton loom and its introduction into use.

And that although, as to all looms which they may hereafter require, they would be personally gainers by the manufacture being thrown open to competition so as to reduce the price, yet they believe that the case of William Crompton is that of a most meritorious inventor, who has not been suitably rewarded ; and impelled by a desire to see justice done to him and his family they respectfully pray your honorable body to extend the term of the patent, as prayed for by his conservator.

Allen Hammond, agent New England Company, Rockville, Conn.

George Kellogg, agent Rock Company, Rockville, Conn.

Thomas Barrows, agent American Mills, Rockville, Conn.

Thomas Crossley, agent Ellington Mills, Ellington, Conn.

George Y. Learned, Taconic Mills, Pittsfield, Mass.

Robert Pomeroy, treasurer Pittsfield Woolen Company, Pittsfield, Mass.

Fox & Rice, Worcester, Mass.
 E. L. Capron, Worcester, Mass.
 F. M. Ballou, Broad Brook Company, Broad Brook, Conn.
 B. Sexton, treasurer Warehouse Pt. Company, Conn.
 F. M. Brown, treasurer Sequassion Wool Company, Windsor, Conn.
 Charles Burnes, agent Clappville Mills, Clappville, Mass.
 D. Oakes, Bloomfield, New Jersey.
 S. & R. Duncan, Franklin, New Jersey.
 Booth Bottomley, Leicester, Mass.
 F. Skinner & Co., agents Otter River Company, Templeton, and North
 Vassalboro' Co., North Vassalboro'.
 N. M. Horton & Co., Brookdale, Mass.
 Charles Armory, treasurer Manchester Print Works, Manchester, N. H.
 Willard Lovering, Taunton, Mass.
 T. L. Dunlap, Taunton, Mass.
 Joseph Carpenter, Providence, R. I.
 Evans & Seagrave, Providence, R. I.
 Seagrave & Steere, Providence, R. I.
 George T. Rice, Worcester.
 J. Wiley Edmonds, Boston.
 Lyman Copeland, Glendale, R. I.
 Edward Marsh, Pascoag, R. I.
 Hawkes & Fowler, Pascoag, R. I.
 Charles Fox, Stafford Springs, Conn.
 Edward S. Hall & Co., New York.
 M. Firgenbaum, New York.
 Bush & Simon Kittrick, Auburn N. Y.

In the matter of the application to Congress for an extension of William Crompton's patent in fancy power-looms—

Edson Fessenden, conservator of the person and estate of William Crompton, of Hartford, State of Connecticut, being duly sworn, says:

That the following is a true account of the assets of said Crompton's estate, and the claims against the same being a balance of eleven thousand five hundred and sixty-eight dollars.

In cash.....	\$8,836
In notes, the proceeds of the law suit.....	2,010
Account against Furbush and Crompton.....	1,447
	12,293
Claims against the estate.....	725
	11,568

The following are the children of William Crompton, now living; George Crompton, age 29 years; Elizabeth, 27 years; Marianne, 25 years; Kate, 23 years; Sarah Ann, 21 years, and William Henry, 12 years of age.

E. FESSENDEN,

Conservator of the person and estate of William Crompton.

STATE OF CONNECTICUT, }
Hartford County. }

Personally appeared Edson Fessenden, well known to me as the conservator of the person and estate of William Crompton, of said Hartford, lunatic, and made oath to the correctness of the within statement and account by him subscribed.

Before me,

HENRY PERKINS,
Justice of the Peace.

HARTFORD, *May* 11, 1858.

MEMORIAL.

To the honorable the Senate and House of Representatives in Congress assembled :

The undersigned having been applied to, on behalf of the family of *William Crompton*, to express our opinions as to their pending application for an act of Congress to extend his patent of November, 1837, for improved fancy looms, for the further term of seven years, do respectfully memorialize your honorable body, and say :

That we believe the invention of Mr. Crompton to be a very valuable one to the woolen business of our country ;

That we believe Mr. Crompton (prior to the loss of his reason) and his son George to have had much difficulty, both from the opposition of rivals and from inevitable misfortunes, to contend with in making profitable use of the patent ;

That we believe that, notwithstanding the diligence and attention of the inventor and his son in the business, he (the inventor) and his family have never realized, or his son for them, a fair reward for an invention of such value, and that an extension of seven years would be no more than enough for that purpose, and we think it would be only just to grant it.

F. Skinner & Co., agents Otter River Man'g Co., Templeton, and North Vassalboro' Man'g Co., North Vassalboro'.

Wright & Whitman, agents of several manufacturing companies.

Almy, Patterson & Co., Boston.

Blakes & Kinsley, Boston.

E. P. King, Boston.

Fox & Rice, Worcester, Mass.

Stanfield, Wentworth & Co., Boston.

Austin, Sumner & Co., Boston,
 Albert Curtis, Worcester.

Thomas & Co., New York.

Hoyt, Tillinghast & Co., N. Y.

Low, Harriman & Co., N. Y.

Nahum Sullivan, N. Y.

Smithe, Evitt & Cooper, N. Y.

Goodrich, Burnan & Foster, N. Y.

W. Langley & Co., N. Y.

Bowers & Beeckman, N. Y.

Tredick, Stokes & Co., Phila.

S. B. Suit, Philadelphia.

George Bullock, Philadelphia.

REPORT

OF THE

COMMISSIONER

OF THE

LAND OFFICE

TO THE

LEGISLATIVE

COMMISSION

OF THE

STATE OF

NEW YORK

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JAMES SANFORD.

[To accompany Bill H. R. No. 895.]

MARCH 3, 1859.—Ordered to be printed.

Mr. REILLY, from the Committee on Patents, made the following

REPORT.

The Committee on Patents, to whom was referred the petition of James Sanford, of Connecticut, for a renewal or extension of his patent for an improvement in straw cutters, respectfully report as follows:

On the 12th day of October, 1843, letters patent were issued to James Sanford for an improvement in straw cutters. A short time before the expiration of the period for which said patent was granted, Mr. Sanford presented his petition to the Commissioner of Patents for a renewal or extension of said patent for the term of seven years from the 12th day of October, 1857. Accompanying this petition was an account, stated by Mr. Sanford, of his receipts and expenditures, together with the affidavits of some twelve persons testifying to an intimate acquaintance with him, his pecuniary circumstances, the utility of his improvement, and the remuneration he had received for the benefits conferred on the public by its invention. On the 12th day of October, 1857, the Commissioner of Patents decided against the application of Mr. Sanford, on the ground that the account of his receipts and expenditures was not sufficiently minute, and that satisfactory evidence was not adduced to show that he had used all the efforts within his power to introduce his improvement into public use. This decision of the Commissioner, as will be observed by reference to the same, was made on the 12th day of October, 1857, the very day on which Mr. Sanford's patent expired, and deprived him from presenting to the Commissioner a more perfect and minute account of his receipts and expenditures and satisfactory proof that he had diligently sought and endeavored to introduce his improvement into public use. The committee are of opinion that justice may be done to a worthy man, and no wrong done to the public, by authorizing the Commissioner to give Mr. Sanford an opportunity to be heard again before him, and, if he can render such an account of his receipts and expenditures and adduce such proof of his efforts to introduce his improvement into public use as will satisfy the requirements of the law and the rules and regulations of the department in such case made, then, and in that case, to grant him a renewal and extension of his patent for the said period of seven years; and therefore report a bill giving such authority to the Commissioner of Patents.

MISSISSIPPI AND MISSOURI RAILROAD COMPANY.

[To accompany Bill H. R. No. 896.]

MARCH 3, 1859.—Ordered to be printed.

Mr. WOOD, from the Committee on the Post Office and Post Roads,
made the following

REPORT.

The Committee on the Post Office and Post Roads, to whom was referred the petition of the Mississippi and Missouri Railroad Company, asking compensation for carrying the mails, report :

That the testimony before the committee shows that the United States mails have been transported by the Mississippi and Missouri Railroad Company daily since the first day of January, 1856, from Davenport to Muscatine and Iowa City, in the State of Iowa; and that said company has been paid for said services from the 15th day of August, 1857, but no compensation has been received by said company for services performed previous to that day.

It also appears that the Post Office Department, in June, 1856, offered the said company \$50 per mile per annum for the service it was then performing and has since continued to perform ; but, in the absence of a contract, the department was not authorized to pay for said service.

In view of these circumstances the committee are of opinion, inasmuch as said service has actually been performed, that the company is fairly entitled to receive the compensation offered by the Post Office Department, deducting the amount paid other parties for partially performing the same service.

The committee therefore report a bill providing for the payment of said claim.

MISSISSIPPI AND MISSOURI RAILROAD COMPANY

Report of the Committee on the Post Office and Post Roads

MADE AT THE HEARING HELD AT THE POST OFFICE AT ST. LOUIS, MO., ON JANUARY 11, 1888

MADE AT THE HEARING HELD AT THE POST OFFICE AT ST. LOUIS, MO., ON JANUARY 11, 1888

REPORT

The Committee on the Post Office and Post Roads, to which was referred the petition of the Mississippi and Missouri Railroad Company, for compensation for carrying the mails, report:

That the testimony before the committee shows that the United States mails have been transported by the Mississippi and Missouri Railroad Company daily since the first day of January, 1884, from St. Louis, Mo., to New Orleans, La., in the State of Iowa, and that said company has been paid for said service from the 15th day of August, 1884, but no compensation has been received by said company for service performed previous to that day.

It also appears that the Post Office Department, in June, 1884, offered the said company \$25 per mile per annum for the service to be performed, and has since continued to perform; but in the absence of a contract the department was not authorized to pay for said service.

In view of these circumstances the committee are of opinion that such as said service has actually been performed, that the company is fully entitled to receive the compensation offered by the Post Office Department, deducting the amount paid other parties for performing the same service.

The committee therefore report a bill providing for the payment of said claim.

LEGAL REPRESENTATIVES OF JOHN MOSHIER.

[To accompany Bill H. R. No. 897.]

MARCH 3, 1859.—Ordered to be printed.

Mr. LOVEJOY, from the Committee on Revolutionary Claims, made the following

R E P O R T .

The Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Lieutenant John Moshier, submit the following report :

In his petition it is alleged, and your committee see no reason to doubt the truthfulness of the statement, that he was engaged in the skirmish at Concord and in the battles of Lexington and Bunker Hill ; also in that of Saratoga, at the time of Burgoyne's capture ; and finally, in that of Monmouth, where, overcome by fatigue, exposure, and the intense heat, he was carried from the field. He never fully recovered from the sufferings and exposure of this battle, as he was never afterwards able to attend to his ordinary business as he had been before. In warm weather particularly, until his death, he was incapable of attending to any business requiring any bodily exertion. The papers show the following facts : May 19, 1775, he received a commission as second lieutenant from the Congress of the Colony of Massachusetts Bay, signed by Joseph Warren ; January 1, 1776, he received a similar commission from the Congress of the United Colonies, signed by John Hancock ; and was authorized by the State of Massachusetts to raise a company, in the November following ; January 1, 1777, he was commissioned as lieutenant by order of Congress. He also has a furlough, signed by De Kalb. But the paper which your committee deem conclusive is the following : " This may certify that Lieutenant John Moshier, of the 8th Massachusetts regiment, served in said regiment as a lieutenant, from January 1, 1777, to January 1, 1780, and then retired on the resolutions of Congress, of October 3 and 21, 1780, as supernumerary officer. During the service he ever behaved as an officer and gentleman." The signature to this certificate is torn off, apparently for the purpose of securing the autograph. Three of the sons of John Moshier, two of whom are still living, and one of whom is a clergyman, make affidavit in due form that they have seen the name of George Washington attached to this certificate. From this testimony, together with that of the handwriting, recognized by some of your committee as his, they do not doubt the genuineness of this certificate. This seems to be conclusive, as there is no evidence that he ever received his commutation or even elected to receive it. Your committee therefore report a bill.

HEIRS OF DR. GEORGE YATES.

[To accompany Bill H. R. No. 898.]

MARCH 3, 1859.—Ordered to be printed.

Mr. JACKSON, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the report of the Court of Claims in the case of the heirs of Dr. George Yates, have had the same under consideration, and beg leave to report:

That this is a claim for commutation promised the officers of the revolution by the resolve of Congress of March 22, 1783. That resolve is in these words:

“*Resolved*, That such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the amount of five years’ full pay in money, or securities *on interest at six per cent.* per annum, as Congress shall find most convenient, instead of the half-pay promised for life by the resolution of the 21st of October, 1780; that all officers belonging to the *hospital* department, who are entitled to half-pay by the resolution of the 17th day of January, 1781, may collectively agree to accept or refuse the aforesaid commutation.”

Dr. George Yates was a “surgeon’s mate” in the Virginia line, and complied with all the requisitions of the law as to service. The only question at issue is, “Was a *surgeon’s mate* entitled to the commutation promised by Congress?” To determine this question properly it will be necessary to review briefly the previous legislation on the subject.

On the 30th September, 1780, the continental Congress say: “Whereas the late regulations for conducting the affairs of the general *hospital* are in many respects defective, &c.

“*Resolved*, That the pay and establishment of the officers of the *hospital* department and medical staff be as follows,” &c. Then follow the pay regulations for this class of medical officers, without, however, making any provision for them after they should retire from the service.—(Jour., vol. iii., 526.)

On the 21st October, 1780, “Congress resumed the consideration of the report of the committee on General Washington’s letter of the 11th October, and thereupon

“*Resolved*, That the several regiments of infantry requested from the respective States by a resolution of the 3d instant be augmented, and consist of one colonel, one lieutenant colonel, one major, nine captains, one surgeon, and one *surgeon's mate*,” &c.—(See Jour., vol. iii., p. 538.)

“*Resolved*, That the officers who shall continue in service to the end of the war shall also be entitled to half-pay during life,” &c.—(Ib.)

In these resolutions there is a clear recognition, *eo nomine*, of surgeons' mates as officers, and as such a promise to pay them “the half-pay during life.” But there being no similar provision under the resolve of September 30, 1780, for the hospital and staff officers, they remonstrated, and memorialized Congress; and on the 17th January, 1781, “Congress took into consideration the report of the committee on the letter of the 5th of November last from General Washington, enclosing a memorial from the officers in the *hospital* department, and thereupon came to the following resolutions:

“Whereas by the plan for conducting the *hospital* department, passed in Congress the 30th September last, no proper establishment is provided for the officers of the medical staff after their reduction from the public service,” &c., &c.

“*Resolved*, That all officers in the *hospital* department and medical staff hereinafter mentioned, who shall continue in service to the end of the war, shall receive during life, in lieu of half-pay, the following allowances,” &c.—(Jour., vol. iii., p. 569.)

Such, your committee find, had been the legislation on this subject when the resolve first quoted was passed by Congress. The resolve of October 21, 1780, provided “half-pay for life” for the officers of the regiments about being called into service from the States, including by name, *surgeons' mates*. The resolve of January 17, 1781, went further, and embraced a class of officers not included in the resolution of October; the one applied to officers *in the line*, the other to officers in the *medical staff* and *hospital* department. These are entirely independent resolutions, having no necessary connexion whatever; and as it is shown by the official records that Dr. Yates was a surgeon's mate in the Virginia continental *line* of the army of the revolution, your committee find that he was legally entitled to commutation under the resolve of March 22, 1783.

It may be inquired why the Court of Claims did not allow this claim if just and legal. Your committee beg that the Court of Claims may speak for itself. Here is the opinion of the Court:

IN THE COURT OF CLAIMS.

HEIRS OF DOCTOR GEORGE YATES *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

It is alleged that George Yates, the intestate, was surgeon's mate in the revolutionary army, and entitled to half-pay for life; and that, being so entitled, he is embraced by the resolve of Congress of March

22, 1783, by which commutation of five years' full pay is given to those revolutionary officers who were entitled to half-pay for life.

It is for such commutation that this suit is brought.

The said resolve of 1783 gives the commutation to those officers who were entitled to half-pay for life under the resolve of Congress of October 21, 1780, or that of January 17, 1781, and we must therefore inquire whether surgeons' mates were entitled to half-pay for life under either of the two last mentioned resolves.

The resolve of the 21st October, 1780, says that the officers who shall continue in the service to the end of the war shall also be entitled to half-pay during life, to commence from the time of their reduction. General Washington, in a letter to Congress of the 5th of November, 1780, says, among other things, "that in the British army, from whence most of our rules and customs are derived, and in which long experience and improvement has brought their system as near perfection as in any other service, the surgeons of the hospital and regimental surgeons are, upon reduction, entitled to half-pay. The mates in both, I believe, are not." Congress soon afterwards, having considered that letter, passed the aforesaid resolve of the 17th January, 1781. That resolve provides that certain half-pay for life should be paid to the officers therein mentioned, of the hospital department and medical staff, who should serve to the end of the war, or become supernumerary. But surgeons' mates are not mentioned.

Our opinion is, that the resolves of 1780 and 1781, together constitute one system, and are to be construed as if passed at the same time; and that they do not embrace surgeons' mates; and we cannot, therefore, consider them entitled to commutation under the resolve of 1783. It is stated by the Committee on Revolutionary Claims, in 1838, that the board of war, in 1784, decided that said resolve of 1783 was not applicable to surgeons' mates; and the committee state, also, that the Continental Congress was of the same opinion.—(Book of Rev. Claims, 462.)

We think that the claimants have no cause of action.

The court here gravely assigns two reasons for rejecting this claim:

1. Because Washington, in a letter, "says that in the *British army*" surgeons' mates are not entitled to half-pay; and

2. That the resolutions of 1780 and 1781, taken together, constitute a system, and are to be construed as if passed at the same time; and that (thus tacked) they would not embrace surgeons' mates.

Your committee are at a loss to perceive how the custom of the British army can, in any way, affect the legal rights of American citizens, or control the interpretation of our congressional statutes. The second reason assigned by the court is, in the opinion of your committee, equally forced, not to say absurd. It has already been shown that there was no connexion whatever between these two resolutions. They provided for different classes of officers. The one supplied a deficiency in the other. If the resolve of 1780 vested legal rights in the officers of *the line*, no subsequent legislation, even if so designed, could have deprived them of those rights. This is too clear for argument.

Having shown that Dr. Yates was entitled to half-pay for life under

the resolve of 1780, and as a necessary consequence to five years' full pay, as provided in the resolution of 1783, it may be well to refer to the action of Congress in similar cases, and your committee would respectfully cite the following:

Dr. Samuel J. Axson, of South Carolina, surgeon's mate, United States Statutes at Large, vol. 6, p. 494; Dr. Joseph Prescott, of South Carolina, surgeon's mate, *ib.*, p. 732; Dr. William Cogswell, of Massachusetts, surgeon's mate, *ib.*, p. 718; and the case of Dr. Joseph Savage, of Virginia, surgeon's mate, passed 2d day of March, 1855. In this last cited case the committee say, "the case is within the strict letter of the resolve of Congress."

The question, then, being settled that the claimants are entitled to the principal, your committee would call attention to the wording of the resolution of March 22, 1783. This resolution says the officers shall receive "five years' full pay in *money*, or securities on *interest at six per cent. per annum.*" This interest is specially stipulated to be paid, as much so as the interest on your treasury notes or government bonds now issued at the present day. Your committee conceive the one as much due as the other, and they report a bill accordingly, and recommend its passage.

NEW JAIL IN WASHINGTON COUNTY, DISTRICT OF COLUMBIA.

[To accompany Bill H. R. No. 899.]

MARCH 3, 1859.—Ordered to be printed.

Mr. MORGAN, from the Committee for the District of Columbia, made the following

REPORT.

The Committee on Public Buildings and Grounds, having had under consideration the expediency of erecting a new jail for the District of Columbia, respectfully report :

That the present jail is in every way unsuited for the purposes of a prison. Owing to the bad material used in its construction, and to unskilful workmanship, it is insecure ; from imperfect ventilation, it is liable to dangerous, contagious diseases ; from bad arrangement, it is extremely difficult to subject the prisoners to the necessary police and discipline ; and the necessity of confining almost constantly within its walls a much larger number of prisoners than it was designed to accommodate, prevents the possibility of separating the young from the confirmed and most degraded criminals, and even compels innocent persons, detained merely to secure their presence as witnesses before the criminal court, to share common cells and corridors with convicts. The committee further report that the location of the jail is in the midst of the population of the city and upon one of the finest of the public squares, surrounded by churches and by the dwellings of worthy citizens, whose women and children are constantly insulted by the indecent words and ribald songs of the prisoners. These facts, which have been repeatedly represented by grand juries of the District of Columbia to the criminal court, by most respectable citizens in memorials to the executive department and to Congress, by the Commissioner of Public Buildings in his official reports, and by the published letter (accompanying the Commissioner's last annual report) of the United States marshal for the District of Columbia, have been confirmed by the personal observation and inspection of congressional committees, and are minutely set forth in the papers which your committee submit with this report.

The power to remedy this great evil is in the general government alone, and, in the judgment of your committee, it is a power which it is the duty of the government to exercise without delay.

2 NEW JAIL IN WASHINGTON COUNTY, DISTRICT OF COLUMBIA.

Congress, by act of August 18, 1856, directed the Secretary of the Interior to cause to be prepared drawings and specifications for a new jail, together with estimates of the cost of building the same, on a site prescribed by the act; and that officer, with his annual report dated November 29, 1856, submitted the drawings, specifications, and estimates called for, but at the same time submitted conclusive objections to the site prescribed. Your committee are informed by the Commissioner of Public Buildings that the government now own grounds in the city of ample area for the construction of a jail upon the plan submitted by the Secretary of the Interior, and in locality, foundation, and advantage of drainage, well adapted for such purpose. Your committee therefore recommend the erection of a new jail in the city of Washington, according to the general plan submitted by the Secretary of the Interior with his report of November 29, 1856, and upon such site, now the property of the United States, as that officer may select; and for that purpose they report a bill.

AARON VAN CAMP AND VIRGINIUS P. CHAPIN.

MARCH 3, 1859.—Ordered to be printed.

Mr. MILES TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of A. Van Camp and V. P. Chapin, asking compensation for property of which they allege they have been deprived, at Apia, in the Navigators' islands, by the wrongful acts of the commercial agent of the United States, exercising authority there, have had the same under consideration and now respectfully report:

The allegations contained in the memorial, and the facts stated in several depositions accompanying it, were of such a nature that your committee deemed it proper to apply to the State Department for any information it might be in possession of, connected with the various transactions which, in the opinion of the memorialists, gave rise to the claim preferred against the United States. In answer to the application made to it that department laid before the committee an immense mass of original papers embracing everything in existence which was calculated to throw any light upon the subject before the committee, but intermingled with a vast deal of matter that could have no bearing upon it. These papers have all been examined with as much care as the time at their disposal would allow; and the committee will now give such a narration of the facts disclosed by those papers as seems necessary for the proper decision of the question presented by the memorial, without entering into any very extended or particular detail of them.

Mr. Chapin had been for some time commercial agent of the United States at Apia, in the Navigators' islands, when he was superceded by Mr. Van Camp, in 1854. Mr. Chapin was engaged in carrying on a commercial business whilst he acted as commercial agent, and Mr. Van Camp, when he arrived at his post, entered upon the same pursuit and provided himself by the purchase, &c., with the land and buildings necessary for the prosecution of his trade and for the accommodation of the members of his family, by whom he was accompanied. After the arrival of Mr. Van Camp, it seems that he and Mr. Chapin carried on business each on his own account, until sometime in the spring of 1855, when they formed a commercial partnership under

the name and style of V. P. Chapin & Co. The business carried on by the partnership appears to have been considerable, and to have required for the prosecution a very considerable stock of merchandise and several establishments.

Whilst Mr. Van Camp was thus engaged in carrying on a mercantile business, he also gave his attention to the proper business of his office of commercial agent; and it is shown by the papers before the committee, that his conduct in his official capacity, in various instances, gave rise to complaints against him on the part of those who were affected by it. Reports growing out of the complaints against him, and injurious to his character, were widely circulated in various ports on the Pacific; and, it is altogether probable that some of them were communicated to the State Department, though there is no direct evidence to that effect before us. During this same period, also, difficulties grew up between Mr. Van Camp in his capacity of commercial agent for the United States, and Mr. Pritchard, the British consul, which led to much angry discussion, and at last terminated in an appeal on the part of Mr. Pritchard, to Captain Fremantle, of H. B. M.'s navy who was in those waters with his ship the Juno. And in addition to these difficulties with Mr. Pritchard, the British consul, Mr. Van Camp had another with divers residents of Apia, in relation to a road, or street, or right of way, in which different holders of property near the bay were interested, in which Commander Bailey, of the United States navy intervened in some way.

Mr. Van Camp left his post on the 12th of May, 1856, on board of the United States ship Independence, with his family for Valparaiso. The cause of his departure for Valparaiso, he states, was the necessity of going there to look after the disposition of a large amount of property belonging to American citizens, which was there in his possession. This property consisted of the cargo of the American whale ship Rambler, which arrived at Apia in distress, in December, 1855. That ship having been condemned as unseaworthy, the cargo had been placed in the warehouses of the memorialists, by the master; and he not being able to dispose of it, after some three months stay, had given it in charge to Mr. Van Camp, with authority to him to make the best disposition of it in his power for all concerned. Sometime having elapsed without Mr. Van Camp having an opportunity to make any disposition of this property at any thing approaching a fair price, he determined to ship it to Valparaiso, and for that purpose he chartered the schooner Eudorus, Captain Seaman, for \$4,000, to proceed to Valparaiso. The cargo of the Rambler, with some property of the memorialists, to complete the lading, was shipped on the Eudorus before the departure of Mr. Van Camp; and when he left Apia on the 12th of May, 1856, in the Independence, it was expected the Eudorus would have followed in a few days. This, however, was not to be.

Many months before this Mr. Van Camp had been superceded in his office of commercial agent of the United States for the Navigators' islands, by the appointment of one Jonathan S. Jenkins, to the place. What was the cause of the removal of Mr. Van Camp does not appear. It is more than likely that it was produced by the reports in circulation to his injury, though nothing of the sort appears from the papers,

and there is nothing to show that any inquiry into their truth was ever instituted under the direction of the State Department. Upon whose recommendation, or upon what information Jenkins was appointed, is unknown to your committee. But a more unfit person to fill any place—and least of all a place of such responsibility beyond the confines of civilization—it is entirely apparent from his own correspondence with the State Department, and from other evidence, could not well have been selected.

Mr. Jenkins left San Francisco, California, in the early part of March, 1856, in the schooner Jeannette, bound for the Navigator Islands, and was accompanied on his voyage by Thomas F. Martin and James M. Conway, two persons who claimed to have been injured by Mr. Van Camp in proceedings taken by him in his official capacity, with respect to the American barques St. Mary and Elvira. It appears from the affidavit of Samuel J. Agnew that Jenkins, before leaving San Francisco, declared he was "going to the islands to arrest Van Camp and seize and sell his property to pay Martin and others who claimed to have been robbed by Van Camp," and, on the voyage, frequently stated that "he had the power, if he caught Van Camp, to hang him, and that his power was equal to a king's." The same purposes, and the same exaggerated notions as to his powers, are also shown by the correspondence of Jenkins with the State Department. In his letter to the Secretary of State of August 11, 1856, he says, in the course of a narrative of his proceedings after his appointment, that "California was rife with accounts of Mr. Van Camp's malversations, and it was reported that he had a gang of rascals at his back," and then remarks that he "felt anxious, but none the less resolute, determined to take life in the maintenance of the honor and dignity of *his office*."

Information was given to Mr. Jenkins of his appointment by a letter from the State Department dated on the 31st of December, 1855. His official bond was given at San Francisco on the 9th of February, 1856. On the 20th of February, 1856, he wrote to the State Department, as appears from one of his letters, mentioning his design of regarding the provisions of the act of Congress entitled "An act to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries," approved August 11, 1848, as having so extended an application as to clothe him, in the Navigators' islands, with the same authority. And on or about the 6th of March, 1856, he sailed from San Francisco for his consulate before it was possible for him to have any reply to that letter. While on his voyage thither, it seems, both from his letter to the department, enclosing copies of what he terms his "decrees," and from the deposition of Samuel J. Agnew, before referred to, that Mr. Jenkins made every preparation necessary to give what would seem to be the forms of law, in the eyes of ignorant or interested men, to the extraordinary course of violence meditated by him. At that time he prepared and signed papers in which he assumed to create a consulate court of the same character and clothed with the same powers with those provided for in the act just referred to, approved on the 11th of

August, 1848, and proceeded to appoint a clerk for the court to be organized, and a marshal to execute its process. Robert S. Swanston and Samuel J. Agnew, who were passengers with Mr. Jenkins on the schooner Jeannette, were appointed to the places thus created by him, and were sworn in to their respective offices before the schooner entered the harbor of Apia.

It further appears from the letters of Mr. Jenkins to the Department of State, and from the papers accompanying these letters, which are now before the committee, that the schooner Jeannette, with Mr. Jenkins and his newly appointed officials on board, arrived off the harbor of Apia on the evening of the 16th of May, 1856, and that Mr. Jenkins having, upon inquiry, learned from the pilot who came on board of the schooner that Mr. Van Camp had left Apia, but that a vessel which was to sail the next day for Valparaiso was then in the harbor laden with property of his, sent Martin and Conway ashore to request Mr. Pritchard, the British consul, to detain the vessel in question until his (Jenkins') arrival in port. The British consul, in conformity with this request of Mr. Jenkins, detained the vessel.

On the next day Mr. Jenkins entered the harbor of Apia, and his marshal, acting under the authority of an order signed by Jenkins, on the 16th of May, 1856, and directing him to take possession and control of "all the property of or belonging to Aaron Van Camp, late United States commercial agent for Apia, wherever it may be found, and of whatever kind or description it may be," &c., proceeded to take possession of the property laded on board of the Eudorus, and to seize the private dwelling of Van Camp, together with the buildings, merchandize, &c., belonging to V. P. Chapin & Co., in which Van Camp had an interest.

But this was not all. On the same day Mr. Jenkins made another order in the following words :

"UNITED STATES CONSULAR COURT, APIA, IN THE ISLAND OF UPOLA, NAVIGATORS' ISLANDS.

"The President of the United States of America to the marshal of the United States for the consulate of Apia and his deputies, or any of them, greeting :

"Whereas an oath has been made to me charging that Aaron Van Camp did, on or about the 16th of May, 1855, unlawfully and piratically and feloniously seize and take possession of the American barque 'St. Mary,' within the jurisdiction of the consular court of the consulate of Apia :

"Now, therefore, you are hereby commanded, in the name of the President of the United States, to apprehend the said Aaron Van Camp and keep him in safe custody until he be dealt with according to law.

"JONATHAN S. JENKINS,

"United States Consul and Vice Commissioner for the

"Consulate of Apia, Navigators' Islands."

What scenes of violence and blood might have followed an attempt to execute such an order, out of the sphere of any civilized government, by misguided or designing men, no one can tell. Luckily, for the reputation of the United States, the absence of Mr. Van Camp, on his voyage to Valparaiso, left Mr. Jenkins no opportunity "to take life," in vindicating "the honor and dignity of his office," through the exercise of his usurped powers, as he says in his letter of the 11th of August, 1856, he was prepared to do. The property of Mr. Van Camp, however, and that of other persons which had been confided to his care, was within Jenkins' reach, and he proceeded to work his will upon it through the agency of a series of proceedings, which were not only carried on without any shadow of legal authority, but were in themselves as iniquitous as they were illegal.

Soon after landing in Apia, Jenkins appointed three associate judges to sit with him in the consular court, established by the decree passed by him before his arrival. These "associates" were Horace D. Dunn and Josiah B. Leeds, the supercargo and captain of the *Jeannette*, in which he had come to the "Islands" as a passenger, and Henry Seaman, the captain of the "*Eudorus*," whose cargo had just been seized by Jenkins' order. When they were appointed does not appear; but their written acceptances of the "commissions" issued to them are among the papers, and bear date on the 22d and 23d of May, 1856; and two proceedings—one in the name of Thomas F. Martin, and the other in the name of J. M. Conway, and which were entitled cases "in admiralty"—were then instituted, before the court so organized, against Mr. Van Camp, and were carried on with such speed that they were brought to a termination by final decrees bearing date on the 29th and 31st of May, 1856, upon which executions were immediately issued.

All the property on board of the "*Eudorus*," though a large portion of it belonged to third parties, together with the other property previously taken possession of under the orders issued by Jenkins on his arrival, was seized as the property of Van Camp under these executions, and sold at auction on the 2d day of June, 1856, the third day after the seizure. Your committee have not found among the papers any detailed report of this sale showing what was sold, or what were the prices paid for the different species of property, or who were the purchasers; but there is a statement among the papers before them dated June 16, 1856, and which was sent to the Department of State by Mr. Jenkins, with his letter of the 30th of September, 1856, from which it appears that the proceeds of the sale made by the marshal, on the 2d of June, 1856, amounted to \$16,993 16; and that, after deducting from that amount the sum of \$2,877 31 for the marshal's fees and other "cash expenses" of the proceedings had, the remainder, forming the sum of \$15,115 85 was paid into the consular court. Accompanying this statement is another showing how this sum was disposed of. From that statement it seems that the further sum of \$431 25 was appropriated to pay the fees of the clerk and court; that \$4000, the full amount to be paid to Captain Seaman, master of the *Eudorus*, under his charter party, for the freight from Apia to Valparaiso, of the property shipped on it by Mr. Van Camp, have been paid to Cap-

tain Seaman, although his vessel had not left the harbor; that \$9,606 60 had been paid to Martin in part satisfaction of his judgment; and that a balance of \$1,077 90 still remained at that time in the consular court.

What was the real value of the property thus sold and disposed of your committee have no means of knowing; nor is it, perhaps, of any importance that it should be known, to enable the House to act in a proper manner on the question presented to it by the memorialists. There can be no doubt, however, when all the circumstances are considered, that the property put up at sale, under the authority of Mr. Jenkins, was wantonly sacrificed, to the grievous injury of all those having an interest in it. And the question then arises: Have the memorialists any claim, legal or equitable, upon the United States in the case presented by them; and if so, then what is the extent of that claim? Does it reach to the value of the whole property of which they were deprived by the action of Jenkins? Or is it to be diminished because a portion of it was really applied to the payment of a debt or debts legitimately due by them? Before entering on the question as to the existence of any liability at all to the memorialists, on the part of the United States, your committee think it best to dispose of the question as to there being any indebtedness on the part of Van Camp, one of the memorialists, to either Conway or Martin, in whose names the proceedings carried on by Jenkins were instituted.

J. M. Conway preferred a claim against the effects of Aaron Van Camp for the sum of \$6,585, for the value of the New Granadian barque "Elvira," which had been, some time before, sold, as he alleged, by the authority of Mr. Van Camp, acting in his capacity of commercial agent.

The facts in relation to the sale of the "Elvira," as shown by the original papers before us are briefly these. The barque Elvira, Captain E. Alley, master, arrived at Apia from San Francisco, bound to Sidney, on the 26th April, 1855, and among the persons on board was one P. S. Colby who claimed to be the owner of the barque, and was so admitted to be by the master. On the same day the master of the barque, E. Alley, and P. S. Colby, went before Mr. Van Camp as the commercial agent of the United States at Apia, and made a protest in relation to this barque, styling it the "American barque Elvira, of San Francisco." In this protest, which was signed by them both, various charges of misconduct were made against Jesse L. Atwood, first officer of the barque, and prayed that he, Atwood, might be discharged from the vessel and dealt with according to law. The following day, P. S. Colby, calling himself the owner of the American barque Elvira, went before Mr. Van Camp in his official capacity, and together with J. M. Coe, Lewis Bartlett, then mate of the barque, and Robert Stanley, declared upon oath that the passengers and crew of the vessel were in a state of insubordination and mutiny, and in consequence of this fact—Mr. Colby then, in the same written instrument—called on Mr. Van Camp as the United States consul, "to take into his possession the said barque and cargo, and to make the best arrangement he could for the benefit of all parties concerned." On the next day (the 28th of April, 1855,) the master of the barque, Captain Alley, stated under

oath, that he had had great difficulties with his passengers; that on his voyage from San Francisco they had used very abusive language towards him and threatened to take his vessel; and that since his arrival at Apia, "a mob of some twenty" of them, had "come to the house on shore where he was sick, and said that he should go no further on the voyage; and that in the evening of the same day they had repaired on board the ship, drove the mate away and taken possession of her." In this statement Captain Alley declared that he and Mr. Colby, the owner, who was a passenger with him were American citizens, and calls on Mr. Van Camp as the United States commercial agent, to take possession of his vessel, the barque Elvira.

After this thirty-one passengers on the barque addressed a letter, dated on the 30th of April, 1855, to Mr. Van Camp, as the United States commercial agent, and to G. Pritchard, as the British consul, jointly, in which they style the barque the New Granadian barque Elvira, and make a statement of the grievances under which they say they had been and were still laboring. They represented that they had been detained in San Francisco "about a month while on board of the barque," owing to an insufficiency of funds on the part of the owner or owners; that they had sailed from San Francisco with rotten rigging and rotten sails; that they were then without fresh provisions of any kind; that there was neither captain, mate, steward, or sailors on board; and that they were left in the vessel out in the harbor without a supply of good fresh water, and without any means of communicating with the shore. They further asserted that it was admitted by Captain Alley himself that the barque could not proceed to sea without a cash advance of three or four thousand dollars to procure the sails and rigging and provisions necessary for the voyage; and as they had no confidence in Captain Alley, who, they said, got frequently intoxicated, and was unfit to be intrusted with the command of the vessel, they therefore begged leave to place their interests under the joint protection of the two functionaries, inasmuch as their different nationalities authorized both of them to interpose in their behalf. This letter of the passengers was followed, on the 2d of May, 1855, by a statement addressed to the commercial agent and signed by Lewis Bartlett, the first officer, and five seamen belonging to the barque, in which they "complain that the said barque is not safe or in a suitable condition to go to sea, because she is insufficiently supplied with sails, rigging, and provisions."

Acting upon these various representations and statements, Mr. Van Camp ordered a survey of the barque. This survey was made on the day after the representations and statements were presented; and the two "Master Mariners," Captain Richard M. Jackson and Captain Henry Seaman, who made it, reported it as their opinion that the vessel had been well provided, but that at that time she stood in need of a number of new sails, and that the running rigging, fore and aft, should be replaced; and they also found that the expense of supplying her with extra provisions for her voyage, would amount to sixteen hundred dollars, "or thereabouts." After this survey was made, no progress whatever was made in getting the vessel ready for sea, and on the 28th of June following, Captain Alley made a declaration in

writing to the effect that he could "not raise money by bottomry or in any other way," and that as his crew had had a survey held on the vessel and she had been condemned, and he was not able to make the necessary repairs, &c., and his crew insisted on being paid off, and that therefore he, "E. Alley, master of the said barque," consented that Aaron Van Camp should "sell the said barque at public auction for the purpose of paying the crew and other lawful claims against her."

Acting under the authority of law, and of the formal request of the master of the vessel, Mr. Van Camp proceeded to sell the *Elvira* at auction, to the highest bidder, on the 2d of July, 1855, when P. S. Colby, her owner, being the highest bidder, she was struck off to him for the sum of twelve hundred dollars. This sale was ratified by Captain Alley, who executed a formal act of sale for her to Colby on the 3d of July, and on the 5th of the same month relinquished the command of her and turned her over into the possession of Colby as the purchaser.

What became of the cargo of the *Elvira* does not appear from the papers, but it clearly appears that it was disposed of by the authority of Captain Alley, as there is an order from him to Van Camp, dated on the 17th of July, 1855, in which he directs him to deliver twenty boxes of tobacco, which he had left with him, to P. S. Colby, and "to settle with him for all of his claims and demands against the sixty thousand feet of lumber" which he had landed at his place from the barque *Elvira*.

From this recital of the facts disclosed by the records of the State Department relating to this transaction, it would seem that the barque *Elvira* was disposed of with the authority of law and of the master and of the reputed owner, and that no liability could attach to Mr. Van Camp for his acts, even though it were true that J. M. Conway was the real owner of the *Elvira* at the time of her departure on her voyage from San Francisco. But there is reason to believe from what appears in the papers before us, that Conway had no real interest in the vessel. The only evidence of title presented before the court created by Jenkins, on the part of Conway, was a sale purporting to have been executed in San Francisco on the 19th of February, 1855, to James M. Conway by one Jesse L. Atwood. No evidence of title in Atwood was offered or shown to exist. Now it appears from the papers in the State Department that there was a Jesse L. Atwood on board of the *Elvira* in the capacity of 1st officer or mate, on her arrival at Apia, and that he was dismissed from the vessel there, by the authority of the commercial agent, for misconduct, on charges preferred by Captain Alley and P. S. Colby, the reputed owner. In the absence of proof to the contrary, is it not fair to presume that the Jesse L. Atwood who was on the barque *Elvira*, in the port of San Francisco, as mate, at the time the pretended sale to Conway was made, and who was dismissed from the barque in Apia, for misconduct, was the same Jesse L. Atwood who made the sale set up by Conway, and one and the same person? If that were so it would be entirely in keeping with all the other features presented by this case.

The suit of Conway against Van Camp in Jenkins' consular court,

as appears from a copy of the record now before us from the State Department, was instituted on the 29th of May, 1856, and proceeded with such remarkable celerity and convenient expedition, that it was brought to a conclusion by a final decree rendered on the 31st of the same month, the second day after it was begun. But this was not by any means the most extraordinary circumstance in the case. Among the evidence laid before the court, though it seems that much of the most important must have been purposely kept out of sight, there was enough to show the real nature of the transaction, so far as Mr. Van Camp was concerned, and in consequence the "associate judges" decided unanimously that if Conway was the true owner of the barque, the case presented was one of barratry of the master, "and that no just cause of complaint" could lie "against the said Aaron Van Camp," &c. This decision, made on the 30th of May, 1855, was not in accordance with the views or wishes of Jenkins; and on the next day, in violation even of the provisions of the very act under which he pretended to derive the extraordinary powers he had been exercising, he overruled that decision, and proceeded to make a decree condemning Van Camp to the payment of \$6,589 as damages, and the costs of the proceedings.

We will now turn to the other claim—that of Thomas F. Martin. This claim against Mr. Van Camp, as made before the consular court of Jenkins, was for the sum of \$20,001 42 for the value of the American barque St. Mary and her cargo, which he alleged Mr. Van Camp had unlawfully and feloniously converted to his own use, and for the loss of the profits which he might have realized by the use of the vessel from the day of seizure until the claim was preferred, and to compensate him "for the griefs, ill-usage, and hardships which the conduct of Van Camp had entailed on him." The sum total is made of various items set forth by Martin in detail, among which are the following:

First cost of the St. Mary.....	\$3,250 00
Expenses incurred in fitting her for sea.....	2,322 62
Profits that he could have realized by the use of his vessel from the day of her seizure until the making of the claim, at the rate of \$500 a month.....	6,000 00
For the griefs, ill-usage, and hardships entailed on him, &c.....	4,000 00

The facts in the case of the St. Mary, as shown by the papers before us, are these:

The barque St. Mary, Thomas F. Martin, master, from San Francisco, bound to Melbourne, arrived at Apia early in May, 1855, in distress.

On the 6th of May, 1855, Captain Martin wrote to Mr. Van Camp, as commercial agent, charging Francis Stanley, his first mate, and William Thurgood, his second mate, with gross disobedience of his lawful orders, both on the voyage from San Francisco and since his arrival at Apia, and complaining of the conduct of his passengers,

and formally protested "against the said officers and passengers continuing on the voyage on the said ship with" him. On the 7th of the same month, (the day following,) Captain Martin and his first mate, Stanley, made their protest before Mr. Van Camp, in his official capacity, in which they spoke of the severe weather which had put the barque in its distressed condition, and had led to the loss of a part of her cargo; and on the same day the second mate, with the carpenter of the barque and four of the seamen, made their written complaint to Van Camp, as commercial agent, in which they represented that the "St. Mary" was not in a suitable condition to go to sea: 1st. Because she was in a leaky condition. 2d. That she was "insufficiently equipped with sails and running rigging;" and, 3d. That her provisions were inadequate, both in quantity and quality, for the prosecution of her voyage. Upon these various representations, a survey of the St. Mary was ordered.

This order was followed by a survey made on the 2d of June, 1855, by John McClemens and James Parker, ship masters, duly appointed to make the same, who declared, upon oath, that, after a careful examination of the barque, they found "her hull very rotten and unfit for sea unless she should have new topsides and deck." And they further stated that the cargo of flour and barley was "very much damaged." There is another instrument, also, among the papers, purporting to give the result of an inspection as to the condition of the "cargo" of the St. Mary, made on the same day, on the joint request of Captain Martin and Mr. Van Camp, by Joseph A. Wilson and Francis Stanley, Captain Martin's mate. The examination made by these persons did not extend to the condition of the vessel. It was limited to ascertaining the condition of her cargo alone, and beyond all doubt preceded the other. It was not, in any sense, an official act, as it was not verified by oath, but seems to have been a mere private paper, clothed with no official formality. Whatever may be the character of the paper—whether it be official or a mere private one—its contents fully sustain the propriety of the commercial agent's interference in the case; for it is distinctly stated in it that the vessel was found "in a neglected and dirty condition;" that "the passengers were in a state of mutiny and confusion, and apparently in charge of the vessel;" that "the body of the cargo" "was badly damaged on the bottom, in the wings, and on top, apparently caused by leaky bottom, side, and deck;" and that, "for the purpose of preserving a portion of the cargo, it should be all removed from the vessel;" and it is further declared that, "in the present condition of the vessel, it would be very improper to reship it in her."

It is proper to mention that another paper, of the same description with the one just spoken of, seems to have been executed by Henry Seaman and Joseph A. Wilson, bearing date on the 8th of May, 1855, as is stated in the record of the proceedings in the consular court of Jenkins, at the instance of Martin; that such a paper was produced, though the original of it is not to be found among the papers before us. This paper, however, like that executed by Wilson and Stanley, corroborates the correctness of the decision of the ship masters who held the survey ordered upon the barque, as the persons

making it, after stating the result of their inspection of the vessel and cargo in detail, certify at the close of their report "that in her present state the vessel" was, in their opinion, "unsafe to go to sea."

In consequence of these various proceedings and of the condemnation of the vessel as unseaworthy by the ship masters, who held a legal survey upon her, Mr. Van Camp ordered the vessel and cargo to be sold for the benefit of those whom it might concern, and it seems clear from all the evidence that this order, so far as it related to the sale of the cargo, was made with the full concurrence of Captain Martin. Whether Captain Martin did or did not consent to the sale of the barque also is involved in more doubt. That sale was made on the 26th of June, 1855. Among the papers received in evidence by Mr. Jenkins' court in the case of Martin against Van Camp, is one dated on the 25th of June, the day previous, in which he protests against the sale of the barque, and declares that although the vessel had been condemned, he, as owner, still claimed the right of holding his own property and disposing of it at his own pleasure. There are other facts, however, shown by the papers which seem to be inconsistent with this position of Captain Martin.

But it seems to your committee unnecessary to decide this question. Whether Captain Martin was or was not opposed to the sale of his vessel was immaterial. His ship had been condemned as unseaworthy. He was unable to repair and equip it in such a manner as to fit it for going to sea. The cause of the unseaworthiness of the vessel was the rottenness of the hull, a defect existing previous to the commencement of the voyage, so that his voyage was broken up in such a manner as to make the vessel liable for the wages of the crew, and there was, under all the circumstances of the case, legal authority in Mr. Van Camp, as commercial agent of the United States, under the act approved July 20, 1840, (5 Statutes at Large, 396,) to sell the vessel for the payment of the crew.

But this is not all. There is the fullest evidence among the papers placed before your committee by the State Department to show that Captain Martin neither had, or could have had, any claim against Mr. Van Camp growing out of this transaction. This necessarily results from the facts, first, that Captain Martin made a sale of the barque St. Mary on the 2d of July, 1855, to Joseph A. Wilson, who had succeeded to the rights of the person bidding her in at auction, for the sum of sixteen hundred dollars, the amount of the bid made at the auction, and in the act of sale made by him acknowledged the receipt of the price; and, second, that he gave a power of attorney to the same Joseph A. Wilson on the day following, in which he empowered him to demand, sue for, and receive, all sums of money due him, &c., and to make a final settlement of all matters appertaining to the barque St. Mary whilst lying in the harbor of Apia, under which a final settlement was made by his attorney in fact with Van Camp, and a full acquittance granted to him, on the 11th of October, 1855. It is, however, due to Mr. Van Camp to say, that the papers before the committee show that the total of the sales made by him of the barque St. Mary and her cargo amounted to the sum of \$9,081 85, and that it appears from the settlement made with Joseph A. Wilson,

the attorney of Martin, on the 11th of October, 1855, Martin himself had received the sum of \$4,357 30 from Van Camp prior to the 12th of July, 1855 ; that the sum of \$2,000 only was paid over to the attorney in fact on the settlement, and that the remainder of the total amount of the sales of the barque and her cargo had been appropriated to the payment of the wages of the officers and crew and of the expenses incurred, and of certain notes given by Captain Martin to persons on board for advances of money.

In the absence of all explanation it would excite surprise that any court, no matter how illegally created or constituted, should be able to make such a decision as that given by the consular court of Jenkins with reference to a case like that of the *St. Mary*, when the facts involved in it were of such a character as to almost necessarily have great publicity, and all of them had transpired in the very place where the court was holden. But in the present instance there is no room for surprise when all the circumstances connected with the transaction are considered.

The pretended court was created for the express purpose of depriving Mr. Van Camp of his property. It sat beyond the limits of any well ordered government, so that it was nearly certain that those who contributed to make it an agent for perpetrating a bare-faced spoliation, would go unpunished. One of the members of the court, Seaman, was so situated, as to find it to his personal advantage to lend himself to the scheme of Jenkins, as its success enabled him to realize the four thousand dollars under his charter party to Van Camp, without leaving Apia. The two were so connected with Jenkins as to subject them, in a great degree, to his influence. And the task imposed on these instruments was rendered a comparatively easy one, by keeping out of view the most material parts of the evidence in existence.

But powerful as were these means at the disposal of Jenkins, it is probable that even they would not have been sufficient to give success to his designs, had it not been that there was a decided hostility to Mr. Van Camp on the part of Mr. Pritchard, the British consul, who had a controlling influence in the neighborhood, and that Mr. Van Camp seems to have been quite unpopular with most of the white persons residing at Apia. It is proper to observe here that, so far as your committee is able to judge of the cause of Mr. Van Camp's unpopularity with the white persons there, from the papers before them, it was not attributable to anything connected with his official conduct, but grew out of differences between him and some of his neighbors as to the lines of their respective properties, and a right of way over land claimed by him. It is also proper to state, in justice to Mr. Van Camp, that the difficulties between him and Mr. Pritchard, the British consul, rose to such a height that Mr. Pritchard brought them, officially, to the notice of Captain Fremantle, of her Britannic Majesty's ship *Juno*, who was then cruising in those seas, and that Captain Fremantle, after taking the charges of Mr. Pritchard into consideration, decided that with respect to the principal one, Mr. Van Camp was right, and that the others were of too frivolous a character to require a decision on them from him.

In whatever light the proceedings of Jenkins may be viewed, they

merit unmeasured reprobation. The claims which he attempted to enforce against the property of Mr. Van Camp, had no foundation in law or equity. But if it had been otherwise, his conduct with respect to the whole matter, would have been iniquitous in the highest degree. There was no warrant of law for the establishment of a consular court at Apia. Nor is there even the shadow of an excuse for the pretence which he set up beforehand, to palliate his meditated usurpation of power. The act approved August 11, 1848, to which he referred in the communication notifying the Secretary of State of his intention to create such a tribunal, left no room for such a construction as there he pretended to give to it. That act was entitled "An act to carry into effect certain provisions in the treaties between the United States and China, and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries," and there is not a provision in the act in relation to the exercise of the powers conferred, which does not, in the most positive manner, negative the idea that any such powers could be exercised elsewhere than in China or Turkey by the agents of the United States.

By the law of nations, the municipal laws and institutions of a State, can operate beyond its territorial limits, and within the territory of another State, only by the authority of special compacts between the two States. It is from that source alone that consuls and other commercial agents derive the power to exercise, over their own countrymen, a jurisdiction in the territories where they reside. This jurisdiction, as it is exercised merely for the convenience of trade, is restricted among civilized nations within very narrow limits, and it is only with respect to China and Turkey, that the United States have entered into any treaties providing for the creation of courts, and the exercise of ordinary judicial powers by its own agents, within the territory of another State. In the absence of any treaty, and of any legislation by Congress authorizing it, the creation of a court by any functionary of the government, would be a mere usurpation of power; all the decrees of any court so created, would be absolute nullities, which could give rise to no rights; and if through the exercise of any jurisdiction thus pretended to be conferred, any person should be deprived of his property, or be aggrieved in his person, all those in any way concerned in the exercise of the usurped power, would be personally responsible for the injuries resulting from that usurpation.

In the present instance Mr. Jenkins, the commercial agent, who assumed the right to create a court, the members of that court who acted under the commissions issued by him, and the ministerial officers who gave effect to the decrees of that court, were all equally responsible in law to Mr. Van Camp, Mr. Chapin, and all other persons interested in it, for the full value of the property wrongfully seized and disposed of under color of the proceedings already detailed. But while this is true as a legal proposition, it is also true that it is absolutely impossible for those who were thus illegally deprived of their property to obtain any redress for the injury they have sustained from the actual perpetrators of the wrong done them. These men are probably without the means of making compensation, and if they were not, as they are all now, stationed among the islands of the Pacific

ocean, they are certainly beyond the reach of judicial pursuit in our courts. Jenkins, the principal actor in the commission of the outrage perpetrated, returned to the United States and appeared in this city in the latter part of May, 1857. He, it is said, is notoriously without pecuniary means, and, in consequence of this, Mr. Van Camp, one of the memorialists who was then in the city, preferred a criminal charge against him before one of the magistrates of the district, for "feloniously and piratically robbing, stealing, taking, and carrying away the property of him, the said Van Camp, and others for whom he was agent, to the value of seventy thousand dollars, &c.," at Apia, in the Navigator islands. On this charge Jenkins was arrested and committed to prison to await a requisition for his removal to the city of New York, where Jenkins had landed on his return to the United States and where the offence charged upon him was cognizable. After his commitment to prison, Jenkins applied to the criminal court of the United States for the District of Columbia for a writ of habeas corpus. This writ was granted; and, on the examination of the case, Jenkins was dismissed from custody without giving time to Mr. Van Camp to procure the attendance of witnesses to substantiate the charge, chiefly, so far as your committee can gather from the papers before them, on the ground that Mr. Appleton, the Assistant Secretary of State, stated, when called on, that he knew nothing about the facts, and that the district attorney of the United States, Mr. Key, informed the court, when applied to in relation to the matter, that "the government declined to take any part in it, and desired that he, Jenkins, should be discharged."

From the situation of the various persons concerned in the perpetration of the wrong, it seems certain that the memorialists are entirely without remedy unless they can obtain indemnity from the United States for the losses they have sustained through illegal action of a government agent; and the question then presents itself: is the government of the United States bound to indemnify them under the circumstances of this case?

The general rule unquestionably is that a nation is not responsible for the illegal acts of its agents. But to this, like all other rules, there may be exceptions. No matter how just or important any particular rule may be in itself, it cannot properly be applied to cases not embraced within the reasons on which it is founded. The reason of the general rule referred to is sufficiently obvious. In all well-ordered governments where the laws are supreme, and justice holds the scales and bears the sword, if any public functionary violates the law by usurping powers not conferred on him, or by the abuse of those with which he is actually intrusted, the courts are always open, and it is both the right and duty of every citizen who is aggrieved to call on them to interfere at once. If this duty is performed the illegal acts attempted to be done are prevented or restrained, or the damages caused by them may be repaired by enforcing the responsibility incurred by all those who were in any way connected with the transaction giving rise to them. But if, on the other hand, this duty is not performed, if when one is within reach of courts competent to prevent or restrain the exercise of usurped authority he fails to invoke

their aid, if the means are at hand to enable them to compel the wrong doers to make compensation for the injuries they have done or the damages they have occasioned ; then there can be no legitimate claim on the government, either in law or equity, on the part of the sufferer, because the injury done him may be fairly considered as the consequence of his own fault, or the failure to obtain redress from those directly bound to him may be properly imputable to his own negligence.

But it must be otherwise, when the circumstances under which the wrongful acts are done are such that it is impossible to prevent the injury or to obtain redress for it through the court. In such cases the reason of the rule, "that a nation is not responsible for the illegal acts of its agents," fails altogether, and the rule, in the opinion of your committee, can have no application. It is on that principle that compensation is made for property taken or destroyed in wars by our own forces, under certain circumstances ; as, for instance, when the owner is compelled to yield the possession of it to overpowering, though illegal, force, and it was impossible for him to obtain redress for the wrong from the officer ordering or those who committed it, because *inter arma silent leges*.

There is also another class of cases in which governments are required, by every principle of justice, to make compensation to those who have suffered loss through the negligence or misconduct of its officers. We allude, of course, to those cases where individuals suffer injury because the ordinary duties of government have not been performed by those appointed to discharge them ; as, for instance, when property is destroyed in time of peace by a mob composed of unknown persons, or when, through the failure to keep streets and thoroughfares in proper condition, unavoidable accidents occasioning injuries, either to persons or property, are met with. It is not necessary to cite adjudicated cases of the kinds referred to where corporations of cities have been condemned to make compensation. All are familiar with their existence, and it can hardly be necessary to say that, so far as to the principle involved in such cases, it is as applicable to claims resulting from them against the governments of States as against those merely municipal in their character.

The municipal governments of cities, like the governments of States, are established for the accomplishment of objects essential to the well being of the people within their jurisdiction ; and, as all the powers necessary for the attainment of the ends aimed at are vested in them. they are bound to give to their citizens the various benefits and advantages which they were created to secure. If those living under a municipal government so constituted are injured or subjected to losses because the government refuses to exercise the powers conferred on it, or because the agents employed under their authority to carry them, into effect either neglect or violate their duty, the government is held to be responsible to those who are aggrieved, on the ground that there has been a breach of the obligation imposed on it in their favor by the mere fact of its creation for the benefit and advantage of all. And then we ask, is not this equally true with respect to the governments of States ? Is not the same obligation to secure their citizens against

violence and wrong, and to extend to them the advantages proposed to be derived from their establishment, necessarily imposed on them also by the mere fact of their creation in the public interest? and do not the same legal and equitable consequences follow from their failure to act at all in discharge of this obligation, or from the neglect or misconduct of the officers to whom they have intrusted the performance of the functions necessary to carry it out? For our own part we are constrained to say that we can discover no real difference, upon principle, between claims made in cases of the nature referred to, no matter what may be the character of the government under which they arise, and that the only practical difference which exists between them grows out of the fact that the government of a State, being sovereign, cannot be sued, whilst that of a city is amenable to judicial pursuit.

Although the determination of the question involved in the present inquiry does not in any way depend upon the rules of international law, yet it is true that cases frequently arise, in the intercourse of nations with each other, connected with the individual rights of their citizens, which are calculated to throw some light on the point under investigation. If a citizen of one country is injured or subjected to loss whilst in another country by the unauthorized or illegal acts of its officials, it has always been held that the government of the country where the wrong was done is bound to make reparation for it, and that it is the duty of the country to which the person aggrieved belongs to demand it for him. This is the settled practice among civilized nations; and the history of our own negotiations with foreign powers presents various instances in which such claims have been allowed and paid to our own citizens by foreign governments, upon the interposition of our government in their behalf. And why is this? Is it not upon the ground that a government is, in law or equity, bound to make reparation in such cases, and that the obligation is so complete and incontrovertible, upon the principles of the civil or municipal law, as contradistinguished from the law of nations, that it is not only the right of a nation to claim the fulfilment of the obligation in behalf of its citizens, but that it also has the right, by the law of nations, to enforce its fulfilment, in the event of a refusal, even by a resort to war? If this is so, if, by the law of nations, it is the duty of our government to compel a foreign government to make reparation to our citizens for the injuries done them by the improper or illegal acts of its agents, on what ground, or with what show of justice, can it be pretended that our own government is not bound to make the same reparation when similar injuries are suffered from the improper or illegal acts of our own agents?

From all these various considerations, it seems clear to your committee that the transactions giving rise to the claim before us are in no way embraced in the reason of the general rule, that "nations are not responsible for the illegal acts of their agents," and that they are, in truth, within the reason of those in which it has been uniformly held by our courts, that an obligation to repair wrongs suffered or losses incurred by individuals is justly imposed on the public. Indeed, it is not easy to conceive of a case which is more entirely within the recognized principles of law. The transactions on which the claim is founded took place beyond the limits of any government competent to

protect or vindicate the rights of individuals, and, it may be said, without the pale of civilized society. The only authority which could have been legitimately exercised there over American citizens was vested in the very man who was engaged in the perpetration of the wrongs complained of, and that man's usurpation of power was sustained by an overpowering physical force, which his official position alone enabled him to command. There was no means within reach of the sufferers by which the usurpation of power which caused the injury done could have been prevented, or by which the responsibility incurred by those concerned in depriving them of their property could have been enforced. But this is not all. Your committee are constrained to say, in addition to this, that the executive department of the government seems to have failed altogether to make any efforts for the assistance or relief our citizens who had been so grievously injured, after the facts in relation to the injury done them had been brought to its knowledge, and that there is good reason to believe that it was chiefly owing to its unwillingness to act that the principal wrong-doer, when there was an attempt made to bring him to justice, upon his venturing within the jurisdiction of our courts, was enabled to escape without a trial, or even a decent judicial investigation.

So far as your committee are informed there has been nothing in the practice of the government which is at all inconsistent with the views to which we have just given expression, whilst on the other hand there has been much in its previous action which seems to indicate a distinct recognition of their correctness. Without attempting an enumeration of the instances of that character, it will be sufficient for our purpose to refer to a single instance in the action of Congress in which such a recognition is necessarily implied. This is furnished by the act (6 Stat. at Large, p. 679) entitled "An act to provide for the settlement of the claim of Mary O'Sullivan," approved July 2, 1836.

In that case the facts were briefly these: A person by the name of O'Sullivan purchased an American brig in one of the South American ports, and took a bill of sale of her, and possession, in pursuance of it, was delivered to him; but as it appeared that the vessel had been registered at Baltimore as owned and commanded by one Furlong, and had been long absent from the United States, O'Sullivan deposited the purchase money on board the United States ship Franklin, and by contract made the payment depend on the future approbation of a commercial house in New York, with which O'Sullivan was connected. Being, however, in possession of the vessel, O'Sullivan caused her to be repaired and refitted, and placing a new commander on board, he directed her to Rio Janeiro, and from thence to Buenos Ayres, to take a cargo of hides to proceed to Cadiz.

Pursuant to these directions the brig sailed for and arrived at Buenos Ayres. On her arrival there she was seized by the commercial agent of the United States, and the master and supercargo were required to give bond that she should immediately, and by the most direct route, proceed to the United States. These officers resisted the demand of the agent as far as practicable, and endeavored to procure such a modification of the bond required as would enable her to pro-

ceed on the voyage to Cadiz. These attempts were unavailing. Mr. Forbes remained inflexible; and the vessel was ordered home by the most direct route, and the greater part of the cargo of hides, which had been purchased, were re-sold. The agent of the United States retained the register and forwarded it, together with his charges against the brig, to the Secretary of the Treasury by another vessel. No proceedings, however, were had upon them on the part of the government, and the brig, after remaining for some time in the port of New York, was libelled for seamen's wages, and on a contract of bottomry, and sold. In the meantime O'Sullivan, the owner of the brig, had proceeded to Cadiz to await her arrival with cargo ordered to be shipped by him, and after having been detained there for some months, in vain awaiting her arrival, he returned to the United States; and it was to make compensation for the losses incurred by him in consequence of the breaking up of the contemplated voyage of his brig, through the action of the commercial agent, that the act for the relief of Mary O'Sullivan, just mentioned, was passed.

It is obvious from the circumstances of this case that it necessarily implies a complete recognition of the views before expressed by us as to the principle which should govern in deciding upon questions of this nature; and that if there be any difference between the two cases, that difference is altogether in favor of the one before us, as the illegal acts complained of by the memorialists were all perpetrated in a distant island where the population are almost in a state of nature, whilst the others all transpired within the limits of a well ordered government.

In conclusion then, your committee, in view of the facts now disclosed in this case, have no hesitation in saying that in their opinion the memorialists are entitled to compensation for the losses which they have actually sustained by the illegal acts of Jonathan S. Jenkins, commercial agent of the United States, under color of his office, and of those acting under his pretended authority; and we therefore present the accompanying bill and recommend its passage.

PHILIP B. HOLMES, WILLIAM PEDRICK.

[To accompany bill H. R., No. 901.]

MARCH 31, 1859.—Ordered to be printed.

Mr. GOODWIN, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Philip B. Holmes and William Pedrick, praying compensation for the invention of a machine for the manufacture of hide ropes, and for the use thereof by the United States, have had the same under consideration, and beg leave to report:

This claim was before the 28th Congress at its first session, when Mr. Marsh, from the committee on Naval Affairs, made a favorable report thereon, which your committee beg to adopt as a part of their own, as follows:

That the petitioners are the inventors of the machine referred to in their petition, and have secured their right to the invention by patent. It is proved, to the satisfaction of the committee, that the machine in question, which is used for cutting raw hides into strips to be laid up into cordage, is a very valuable improvement in the manufacture of that article, inasmuch as it cuts an entire hide into a single strip of uniform size, and thereby both facilitates the manufacture of rope of that material, and improves its quality, making also a considerable saving in the cost of cutting and laying up the strands. The quantity of hide rope annually required for the use of the navy is estimated by the Bureau of Construction and Equipment at 5,750 pounds, and the usual cost has been twenty-nine cents per pound—the hides costing from eleven to twelve cents, and the cutting and laying up about eighteen. The machine in use at the navy yard at Charlestown, Massachusetts, cut the hides for 5,782 pounds of cordage during the year ending February 1, 1844, and at a saving of from twenty-five to fifty per cent. (according to the estimates of different witnesses) on the entire cost of the rope.

It further appears, that at the time of the invention of the machine in question, the petitioners were in the employment of the government at the navy yard at Charlestown, as machinists, and constructed the machine there used, for and at the expense of the United States—receiving, however, no compensation, except their daily wages as machinists; and that the board of navy commissioners refused to

make them any compensation for the invention or use of the machine, because it was invented and constructed while the inventors were under pay in the public service, and because they allowed it to be used by the government before securing their right by patent.

In the opinion of the committee, this fact does not constitute a valid objection to the claim of the petitioners. They have received compensation only for the time and labor spent in the construction of the machine, and have not been in any way rewarded for the exercise of the mechanical ingenuity requisite for its contrivance. Had the machine been invented and patented before the petitioners were employed by the government, it could not have been used without a purchase of the right. The petitioners were employed not as *inventors*, but as laborers—not to *contrive*, but to *build* machinery; and there does not appear to be any equitable ground for denying them a compensation for that mechanical ingenuity and skill in contrivance, which the nature of their employment did not compel them to exercise, but which has nevertheless been exercised with great advantage to the public service.

According to the data above given, the United States save, by this invention, a sum which cannot be estimated at less than five hundred dollars annually, to say nothing of the superior quality of the article produced.

The committee refer to various pieces of evidence hereto annexed, and marked A, B, C, D, and E, as part of this report.

A.

Letter from Bureau of Construction and Equipment.

BUREAU OF CONSTRUCTION AND EQUIPMENT,
March 26, 1844.

SIR: Your letter to the Secretary of the Navy of the 25th instant, has been referred to this bureau. You are informed, in reply, that the quantity of hide rope manufactured for naval purposes annually, is about 5,750 pounds. The cost of manufacturing the hide into rope is about 18 cents the pound. The value of the rope is 29 cents the pound. The cost of hides is 11 or 12 cents the pound.

I am, very respectfully, your obedient servant,

B. M. VOORHEES,

By order of the Secretary of the Navy.

Hon. GEORGE P. MARSH,

Committee on Naval Affairs, House of Representatives.

B.

Letter from Stephen Whitman, jr.

SIR: I would respectfully state that the machine specified above is in operation at the ropewalk; by means of it, hide rope can be furnished for the uses of the navy, at one-half the cost of the market rope, and of as good quality. The machine is serviceable, complete, and perfect in its operations, cutting the hide into one continuous strip of any width required, and perfectly uniform. The individuals claiming it are the inventors and patentees.

I am, respectfully, yours,

STEPHEN WHITMAN, JR.

Com. JOHN DOWNES,

Com. navy yard and station, Boston.

C.

Letter from Commodore Nicolson.

NAVY YARD, COMMANDANT'S OFFICE,
Boston, March 19, 1844.

SIR: In answer to the letter from the department of the 13th inst., enclosing a copy of one from Hon. George P. Marsh, one of the Committee on Naval Affairs, calling for information relative to a machine for cutting hide into strips for the purpose of making hide ropes, I herewith enclose a report of the master ropemaker who has charge of the ropewalk, as well as the machine for preparing the hide to be laid up into rope.

I beg leave to add that I consider it a great improvement, and that it lessens much the expense in preparing the yarn (or strip) for the hide rope; and I presume it makes a difference of at least 25 per cent., and the yarn (or strip) is equal in width throughout, and in one piece, which is a great desideratum in laying up the rope.

I have the honor to be, sir, very respectfully, your obedient servant,

JOHN B. NICOLSON,
Commandant.

Com. L. WARRINGTON,

Secretary of the Navy ad interim, Washington.

D.

Letter from William Caban.

UNITED STATES ROPEWALK,
March 19 1844.

SIR: In answer to the interrogatories from the Secretary of the Navy respecting the patent hide-cutting machine of Messrs. P. B.

Holmes' and William Pedrick's invention, I would most respectfully state that from the 1st of February, 1843, to 1st February, 1844, there have been manufactured 5,782 pounds of hide rope for the United States navy here.

The cost of the hide rope cut by this machine is reduced 30 per cent. by its introduction, and its invariable uniformity (of any size for the strands or yarns) and the rapidity with which it can be managed; it appears to me a great desideratum for such an establishment as this.

I have the honor to be, sir, with great respect, your obedient servant,

WILLIAM CABAN,
Superintendent.

Com. JOHN B. NICHOLSON,
Commanding Navy Yard, Boston.

E.

Letter from Board of Navy Commissioners.

NAVY COMMISSIONERS' OFFICE,
February 10, 1841.

SIR: Your letter of the 4th instant has been received. As the machine for cutting hides into strips for making ropes, patented by Messrs. P. B. Holmes and William Pedrick, the inventors, was made by the United States at the risk of the government, and by persons employed and paid by them, there does not appear to exist any just claim upon the government for its use, on the part of the inventors, it having been used before the patent was obtained; against private individuals the inventors, in the opinion of the board, have a just claim.

I am, sir, very respectfully, your obedient servant,

C. MORRIS,
For the Board of Commissioners.

Com. JNO. DOWNES,
Commanding Navy Yard, Boston.

Your committee would correct the report of the Naval Committee in this important particular. The machine was invented during hours at which the inventors were not required to be employed at their posts in the public service. In support of this your committee refer to the following full statement of Benjamin Crowninshield who was familiar with all the facts:

CHARLESTOWN, *December 1, 1858.*

SIR: I have received your letter of the 11th instant requesting me to give you my opinion of the machine for cutting hides into strips, invented by you and Mr. Wm. Pedrick in the year 1840, and put in

operation in the rope walk in the navy yard at Charlestown. Being at that time first clerk to the commandant Commodore Downes, and taking an especial interest in the operations of the rope walk and promoting in various ways its means of successful performances, and being fully informed as to the demands of the naval service for the various kinds of cordage required for the fitting of the United States ship-of-war, and being frequently called on to make requisitions for hide rope, which was always procured in the open market, either in Boston or New York, and as there was no other rope of this description but that imported, and that of a high price, from fifty cents to a dollar per pound, which sometimes proved to have been made of damaged hides and otherwise defective, and knowing the importance of this kind of rope for various parts of the rigging of ships, I called on Mr. Pedrick, whether a machine could not be invented that would supersede the rude and expensive mode of cutting by hand, which mode had been frequently resorted to to make the bands required for the machinery of the ropewalk itself, and was told by him that he would, at his leisure moments, make some experiments in the cutting of hide and the motive of the machinery most likely to effect the object in view. In urging him to make the experiment, that is I told him that it need not interfere with his usual duties as master machinist of the rope walk, and being daily in attendance for facilitating his attempts, I well know that his attempts to produce a machine were made at unusual hours or in such leisure time not required for the necessary duties of his situation of master machinist. After a considerable time so spent, two or three months, an unexpected discovery was made by which the hide could be cut rapidly and of an even and uniform width, and upon elaborating a machine and applying the new device, a most remarkably successful result followed. The principle being thus discovered nothing more was wanted than to construct a complete machine of a sufficient size and strength to answer fully all the requirements of the ropewalk.

Commandant Downes took interest in the matter, and directed that the work of constructing the machine should be done in the yard by Mr. Pedrick and yourself. The invention, that is, the final intellectual conception of the principle of the machine, being obtained, the mere mechanical construction of the machine was within the competency of an ordinary workman, and the making of it in the yard, by the order of the commandant, was but the employment of Messrs. Pedrick & Holmes in the ordinary duties of their situations, as laborers and mechanics, in the ropewalk. A word or two of Mr. Pedrick; he was employed at the commencement of operations of the ropewalk, to attend exclusively to the spinning machinery, and his very valuable services in the spinning department are well known, and his nice mechanical skill and faithfulness contributed greatly to the successful prosecution of the novel and efficient spinning machinery of the establishment. There is scarcely any part of that complicated machinery which he has not reproduced of a better material, and in some essential parts, of a better form than the original. The machine being once put in operation, it is in the power of the government to command a supply of the hide rope, of reliable strength, and altogether independent of the

regulation supply from foreign markets, and this circumstance has been the reason of the increased demand for the fitting and equipping of our ships-of-war.

The rigging, where great strength is always required, and of rope, subject to much wear and tear, the hide rope is considered indispensable, and the rope is now furnished from the navy yard at Charlestown, at a cost of half and even less than half of the cost of the inferior foreign production.

The machine has been in constant use since 1840, some eighteen years, and from a recent inspection, I find that the original is now in as perfect order as on the first day of its performances, and no alterations or repairs have been found necessary. One person only, is required to attend it, and he has only to throw the raw hide on the circulating table, adjust the cutter, and the work goes on till the entire hide is cut into a continuous strip of from an eighth to a quarter of an inch in width, of perfect uniformity, from eight to ten, and even eleven hundred feet in length, which is afterwards laid up into rope of all the required sizes. For the quantity of this kind of rope that has been finished for the navy, I must refer to the books of the ropewalk or storekeeper of the yard, where much information can be obtained with exactness. The saving to the government has been great, besides the saving of wear and tear of rigging on board the vessels of the navy, and the greater safety to a ship at sea.

Respectfully, your obedient servant,

BENJAMIN CROWNINSHIELD.

P. B. HOLMES, Esq.,
Charlestown, Massachusetts.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss.*

CHARLESTOWN, *December 1, 1858.*

Then personally appeared the within named Benjamin Crowninshield, and made oath that the foregoing statement made and subscribed by him is true.

Before me,

SIDNEY A. WILLARD,
Justice of the Peace.

Your committee ascertain that, since machine was adopted, 275,596 pounds of hide rope have been manufactured and delivered at Boston navy yard, at a saving to the government of many thousand dollars. They conceive it too plain for argument, that the inventors and patentees are entitled to a fair consideration for the use of their invention, which has proven of such advantage to the public service. Petitioners claim twenty thousand dollars, which sum your committee have reduced to three thousand dollars, for which they report a bill, and recommend its passage. Your committee beg to refer to the following papers, marked F, G, H :

F.

UNITED STATES NAVY YARD,
Boston, November 30, 1858.

I hereby certify that there has been received into the navy store from the United States rope walk at this yard, manufactured during the period commencing January 1, 1844, and ending October 31, 1858, 275,596 pounds of hide rope.

WILLIAM W. PEIRCE,
United States Naval Storekeeper.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss.*

CHARLESTOWN, *November 30, 1858.*

Then personally appeared the above named William W. Peirce, United States naval storekeeper, and made oath that the above statement by him subscribed is true.

Before me,

SIDNEY A. WILLARD,
Justice of the Peace.

G.

UNITED STATES ROPEWALK,
December 1, 1854.

This will certify that I have been employed in this establishment since December, 1837—from April, 1842, as superintendent. During the whole of this time I had charge of the hide-cutting machine, invented by Messrs. Holmes & Pedrick; has been used for cutting the hides into strips for making hide rope for naval vessels. Prior to the introduction of this machine the hides were cut by hand, a method very expensive and uncertain, as the strips were very unequal in width, making it entirely impracticable to make the rope of uniform size.

By the use of the machine invented by Messrs Holmes & Pedrick the strips are cut of any width required, and perfectly uniform in size. The cost of cutting by the machine is at least 33 per cent. less than by hand. The advantage gained by the use of the machine in the superiority of the rope is incalculably great over hand cutting.

WILLIAM CABAN,
Superintendent.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex, ss.*

DECEMBER, 1858.

Then personally appeared before me the within named William Caban, and made oath that the within statement made and subscribed to by him is true.

Before me,

GEORGE W. DANIELS,
Justice of the Peace.

H.

CHARLESTOWN, *January 18, 1859.*

This is to certify that the hide-cutting machine (invented by Messrs. Holmes & Pedrick,) now and for several years past in operation at the navy yard ropewalk, is the only machine at work cutting hide for the manufacture of hide-rope in this vicinity, or, as I have good reason to believe, in the country.

Hide wheel-ropes, manufactured from strips cut by this machine, have for several years been furnished for the Sound steamers by permission of the Navy Department, it being impossible to obtain such rope in the market.

ROBT. GARDNER, Jr.

STATE OF MASSACHUSETTS, MIDDLESEX, ss. }
Charlestown, *January 18, 1859.* }

Then personally appeared the above named Robert Gardner, Jr., and made oath that the above statement made and subscribed by him is true. Before me,

WM. W. PEIRCE,
Justice of the Peace.

JOEL M. SMITH.

[To accompany Bill H. R. No. 902]

MARCH 3, 1859.—Ordered to be printed.

Mr. GOODWIN, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Joel M. Smith, praying allowance for paying pensions at Nashville, Tennessee, have had the same under consideration, and beg leave to report :

That Mr. Smith was employed for some years, (from January 1, 1840, to February 20, 1847,) in paying pensions, at Nashville, Tennessee, for which he received no compensation, there being no law under which payment could be made for such services. In February, 1847, Congress passed an act allowing pension agents two per centum on all disbursements; and since then several special acts have been passed allowing the same pay for sums disbursed previously to that date. During the last session of the present Congress a bill was passed "for the relief of the legal representatives of Daniel Hay," allowing them a similar compensation. Your committee consider this but justice to these public agents, and they therefore report the accompanying bill and recommend its passage.

JOHN M. SMITH

REPORT

MADE AT THE REQUEST OF THE COMMITTEE ON THE CURRENCY

Mr. Smith, from the Committee on the Currency, made the following

REPORT

That the Committee on the Currency, created by the Act of March 3, 1879, Chapter 136, entitled "An Act to provide for the redemption of the currency," and to report thereon.

That Mr. Smith was appointed for three years (from January 1, 1880, to January 30, 1883), as Acting Treasurer, of the Treasury, for which he received no compensation, there being no law under which payment could be made for such services. In February, 1887, Congress passed an act allowing Treasurers agents two per cent on all disbursements; and since that several special acts have been passed allowing the same pay for some disbursed previously to that date. During the last session of the present Congress a bill was passed for the relief of the legal representatives of Daniel J. Hastings, allowing them a similar compensation. Your committee consider this but justice to these public agents, and they therefore report the accompanying bill and recommend its passage.

WILLIAM BROWN.

[To accompany Bill H. R. No. 903.]

MARCH 3, 1859.—Ordered to be printed.

Mr. GOODWIN, from the Committee of Claims, made the following

R E P O R T.

The Committee of Claims, to whom was referred the petition of William Brown, "praying compensation for certain losses suffered in the war of 1812," have had the same under consideration, and beg leave to report:

That the evidence shows the claimant to have been a man of means during the war of 1812, and that he was liberal in his efforts to sustain the honor and credit of the country. His losses were evidently heavy, but, under the principles laid down by your committee in a number of cases already decided, the government cannot be held liable for these losses. The testimony, however, shows that Mr. Brown surrendered, for the use of the troops, on demand of the officers of the government, a wagon, two horses, and certain goods, which were reasonably worth, at the time, the sum of five hundred dollars, and this your committee think is a fair charge against the government; they therefore report a bill for this amount and recommend its passage.

WILLIAM WROTH

[To accompany H. R. No. 901]

March 2, 1855—Ordered to be printed.

Mr. GOUGH, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of William Brown, praying compensation for certain losses sustained by him in the year 1812, have had the same under consideration, and they have the

honor to report: That the evidence shows the claimant to have been a man of means during the war of 1812, and that he was liberal in his efforts to sustain the honor and credit of the country. His losses were evidently heavy, but, under the principles laid down by your committee in a number of cases already decided, the Government cannot be held liable for those losses. The testimony, however, shows that Mr. Brown expended a large sum of the troops, on demand of the officers of the Government, a wagon, two horses, and certain goods, which were reasonably worth, at the time, the sum of five hundred dollars, and this your committee think is a fair charge against the Government; they therefore report a bill for this amount and recommend its passage.

ROBERT HARRISON AND OTHERS.

[To accompany Bill H. R. 904.]

MARCH 3, 1859.—Ordered to be printed.

Mr. MAYNARD, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom were referred the petition of Robert Harrison and the adverse report from the Court of Claims, No. 127, have had the same under consideration and beg leave to report:

By the 9th article of the treaty of 1819 between Spain and the United States, our government entered into the following undertaking:

“The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers, and individual Spanish inhabitants, by the late operations of the American army in Florida.”

“Y los Estados Unidos satisfarán los perjuicios, si los hubiese habido, que los habitantes y oficiales Espanoles justifiquen legalmente haber sufrido por las operaciones del Exercito Americano en ellas.”

To carry into effect this provision of the treaty, Congress, in 1823, passed the following act:

“That the judges of the superior courts established at St. Augustine and Pensacola, in the Territory of Florida, respectively, shall be, and they are hereby, authorized and directed to receive and adjust all claims, arising within their respective jurisdictions, of the inhabitants of said Territory or their representatives, agreeably to the provisions of the 9th article of the treaty with Spain by which the said Territory was ceded to the United States.

“SECTION 2. *And be it further enacted*, That in all cases in which the said judges shall decide in favor of the claimants, the decisions, with the evidence on which they are founded, shall be by the said judges reported to the Secretary of the Treasury, who, on being satisfied that the same is just and equitable, within the provisions of the said treaty, shall pay the amount thereof to the person or persons in whose favor the same is adjudged, out of any money in the treasury not otherwise appropriated.”—(3 Stat. at Large, 768.) And in 1834 the following act:

“That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the treasury not otherwise appropriated, the amount awarded by the judge of superior court at St. Augustine in the Territory of Florida, under the authority of the 35th chapter of the acts of the 17th Congress, approved 3d March

1823, for losses occasioned in east Florida by troops in the service of the United States, in the years 1812 and 1813, in all cases where the decision of the said judge shall be deemed by the Secretary of the Treasury to be just: *Provided*, That no award be paid except in case of those who, at the time of suffering the loss, were actual subjects of the Spanish government. And *provided* also, that no award be paid for depredations committed in East Florida previous to the entrance into that province of the agent or troops of the United States.

“SECTION 2. *And be it further enacted*, That the judge of the superior court at St. Augustine, be and he is hereby authorized to receive, examine and adjudge all cases of claims for losses occasioned by the troops aforesaid in 1812 and 1813, not heretofore presented to the said judge, or in which the evidence was withheld in consequence of the decision of the Secretary of the Treasury, that such claims were not provided for by the treaty of February 22, 1819, between the governments of the United States and Spain: *Provided*, That such claims be presented to the said judge in the space of one year from the passage of this act: *Provided also*, That the authority herein given shall be subject to the restrictions created by the provisos of the preceding section.”—(See Stat. at Large, vol. 6, p. 569.)

Under these acts, the judges of the district courts of Florida proceeded to investigate the claims for injuries committed, and allowed such as they thought well founded, and within the provisions of the treaty; adopting as the measure of damages, the value of the property destroyed, with interest at the rate of five per centum per annum from the time of its destruction, and gave decrees accordingly. On being referred to the Secretary of the Treasury, that officer paid that portion of them which consisted of the value of the property, but refused the item of interest allowed by the judges, on the ground of departmental usage not to pay interest. An attempt was made to appeal to the Supreme Court, but that tribunal decided that under the acts of Congress it had been clothed with no jurisdiction. The Court of Claims made a similar decision, repelling the applicants.

Assuming that the action of these several tribunals is right and in conformity with the statutes, we recur to the treaty; that being in its two-fold nature a contract between nations, and a law of each, is of a dignity higher than the mere legislation of either, and must be carried into effect, if need be, by supplemental legislation.

The obligations of the treaty in question it is conceived are too obvious to require much comment. By the terms of the article already cited, this government undertakes that it “will cause satisfaction to be made” (in the Spanish draft, “satisfarán”) “for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers, and individual Spanish inhabitants,” &c., (in the Spanish “los perjuicios si los hubiese habido que los habitantes y oficiales espanoles justifiquen legalmente haber sufrido,” &c.)

It is too clear for argument that by “satisfaction” the parties both intended legal satisfaction, or the remedy which the law gives for injuries of a similar character. The measure of damages for the injury occasioned by the destruction of personal property is the value of the property at the time of its destruction, with interest thereon to the day of the judgment. This principle, as a rule of both municipal and

international law, it is conceived, is too well known to require in its support citations from the unbroken current of authorities. It is elementary—almost axiomatic. If there is a liability fixed for the value of the property, the interest follows as a necessary corollary.

The government has already admitted its liability for the value of property destroyed within the purview of this treaty, and has foreclosed the question of interest. It is forever estopped to deny it. Interest should be paid as a matter of course, and as a necessary legal consequence of the admitted liability to pay the value of the destroyed property. It is as much a portion of the legal damages as the value of the property itself.

This is not a question between the government and its own citizens, where considerations of policy and expediency are supposed to be admissible. It is between our own country and another; and our proverbial good faith as a nation, in the fulfilment of our treaty stipulations, in the opinion of your committee, forbid that we should refuse or hesitate in our obligations to Spain; and especially just as we are on the eve of further negotiations of the highest moment with that ancient power; *fides servanda est*.

The attention of your committee has been called to the action of the Committee of Claims in the Senate, and they adopt and incorporate with their own, the report submitted to that body at the last session of this Congress, and recommend to the House the passage of a similar bill, general in its character, and disposing of this whole class of claims. Such a bill they herewith report.

IN THE SENATE OF THE UNITED STATES, *May 17, 1858.*

Mr. CLARK made the following report, to accompany Bill S. 373 :

The Committee on Claims to whom were referred the reports of the Court of Claims, in the cases of Letitia Humphreys, administratrix of Andrew Atkinson, deceased, and of Robert Harrison; and also the memorial of the said Harrison to Congress, praying, in behalf of himself and other claimants, the full and faithful execution of the 9th article of the treaty of 1819 with Spain, by the payment of the residue of the decrees made by the United States judges in their favor, report :

That they have examined the facts and principles of law connected with these cases, with the care and mature deliberation which the importance of the principles and the magnitude of the aggregate amount involved seemed to require.

The cases referred to belong to a class, all depending on the same principles and considerations, arising under the last clause of the 9th article of the Florida treaty of 1819.

In order that the Senate may fully understand the decision of the Court of Claims on the cases reported, and the merits of the class of claims to which the cases referred belong, the committee deem it proper to give a succinct statement of their nature and origin.

In 1811, relations of peace and amity existed between the United States and Spain, under the treaty of 1795; but the relations between the United States and Great Britain, and between the latter power and Spain, were of such a character as to create apprehensions on the

part of the United States that Great Britain would seize the provinces of East and West Florida, then a dependency of the crown of Spain; and the United States having long looked to a cession of those provinces as an indemnity for her just claims upon Spain, and being unwilling, from their geographical position, that any other power should possess them, and especially Great Britain, with whom we were then on the eve of war, Congress, on the 15th day of January, 1811, passed an act and joint resolution, by the former of which the President was authorized to take possession of the Floridas, "in case any arrangement has been, or shall be, made with the local authority of said territory for delivering up the possession of the same, or any part thereof, to the United States; or in the event of any attempt to occupy the said territory, or any part thereof, by any foreign government."—(3 Stats. at Large, pp. 471, 472.) And for that purpose, the President was authorized by that act to employ any part of the naval and military forces of the United States; and \$100,000 was appropriated for that object.

General George Matthews and Col. John McKee were appointed military agents or commissioners of the United States, by the President, with secret instructions "to repair to that quarter with all possible expedition," for the purpose of carrying out the intention of the act of Congress, with authority, if necessary, to call to their aid the naval and military forces of the United States in that quarter of the Union, the commanders of which had been instructed to obey their orders.—(American State Papers, vol. 3, Foreign Relations, p. 571.)

No surrender of that province was made by the governor, and the agent of the United States proceeded to take possession of the whole inhabited portion of East Florida, except the city of St. Augustine, including Amelia island and the neutral port of Fernandina; and this possession, thus acquired, was forcibly maintained until about the middle of May, 1813, when the United States troops were withdrawn by command of General Pinckney.

As this occupation of East Florida by the American forces was strenuously and forcibly resisted by the Spanish authorities thereof, a feeling of great bitterness on the part of the invading forces was excited against the loyal Spanish inhabitants and officers; and an occupation of the province, which was only intended by Congress, in the condition of things found to exist, to be peaceful on the part of the United States and voluntary on the part of Spain, was converted into a forcible occupation by the agent of the United States.

These injuries of 1812 and 1813, which were protested against by Spain, were in open violation of the law of nations and of the treaty of peace then existing between the two governments, and were so admitted to be by the United States; and their commissioner, General Matthews, was punished by dismissal.—(American State Papers, above cited.)

During the war between the United States and Great Britain, in 1814, West Florida was entered by General Jackson, and the army under his command, to expel the British and their Indian allies from Pensacola; and in 1818, the same officer again entered West Florida,

in pursuit of the Indians. and St. Mark's and Pensacola were taken, and subsequently restored.

Both these last named invasions of General Jackson and his army, were also complained of by Spain as violations of her neutrality ; but were justified, or sought to be excused by the United States, on the ground of necessity ; while no such ground was ever urged in justification of the invasion of East Florida, in 1812 and 1813.

It appears from the correspondence between Mr. Adams and Mr. Onís, which lead to the treaty of 1819, that *mutual indemnities* for all injuries were fully agreed upon *before General Jackson entered Florida in 1818.*—(American State Papers, Foreign Relations, vol. 4, pp. 465, 467, 475.)

For all these injuries, Spain earnestly demanded satisfaction ; and when the treaty of 1819 was concluded, the following provision was inserted, and constitutes the last clause of the 9th article of that instrument, viz :

“The United States will cause *satisfaction* to be made for the injuries, if any, which, *by process of law*, shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American army in Florida.”—(Statutes at Large, vol. 8, p. 260.)

“To carry into effect” this provision of the treaty, Congress passed the act of March 3, 1823, which is as follows :

“AN ACT to carry into effect the ninth article of the treaty concluded between the United States and Spain, the twenty-second day of February, one thousand eight hundred and nineteen.

“SEC. 1. That the judges of the superior courts established at St. Augustine and Pensacola, in the Territory of Florida, respectively, shall be, and they are hereby, authorized and directed to receive and adjust all claims arising within their respective jurisdictions, of the inhabitants of said Territory or their representatives, agreeably to the provisions of the ninth article of the treaty with Spain, by which the said Territory was ceded to the United States.

“SEC. 2. That in all cases in which said judge shall decide in favor of the claimants, the decisions with the evidence on which they are founded, shall be, by the said judges, reported to the Secretary of the Treasury, who, on being satisfied that the same is just and equitable, within the provisions of the said treaty, shall pay the amount thereof to the person or persons in whose favor the same is adjudged, out of any money in the treasury not otherwise appropriated. Approved March 3, 1823.”—(3 Statutes at Large, p. 768.)

After the passage of the said act, the judges proceeded to adjust “claims arising within their respective jurisdictions,” upon sworn petitions of the claimants and proofs taken, as in chancery or admiralty cases. The judge of West Florida made decisions or awards for injuries suffered from the invasion of 1814 in that province ; and the judge of East Florida, in like manner, proceeded to receive and adjudge claims for the injuries resulting from the invasion of 1812 and 1813 in that province.

Mr. Secretary Crawford, however, decided that the injuries of 1814 in West Florida were not embraced by the treaty—either from the supposed import of the word “late” in the English original, (but not

in the Spanish,) and which was construed to be synonymous with *latest* or *last*, and therefore only applicable to the invasion of 1818, or because the invasion of West Florida in 1814, during our war with Great Britain, to expel the British forces and their Indian allies from neutral territory used to originate operations against the United States, was justified by the law of nations, and therefore was no injury, within the true meaning of the treaty of 1819. Both these reasons were urged against those claims.

When the decisions of the judge of East Florida, in favor of the claimants, for injuries resulting from the invasions of 1812 and 1813, were reported to the Treasury, Mr. Secretary Rush, the successor of Mr. Crawford, applied Mr. Crawford's decision to those claims though the United States had never attempted to justify that invasion as authorized by the law of nations, as they did the invasions of 1814 and 1818 in West Florida, by rejecting them. The claimants for injuries in 1812 and 1813, therefore, petitioned Congress for relief against this erroneous construction of the treaty; and Congress, by the act of 26th June, 1834, overruled the decision of Mr. Secretary Rush, that the injuries of 1812 and 1813 were not within the provisions of the treaty of 1819, by the passage of the act of the 26th June, 1834, which is as follows:

“AN ACT for the relief of certain inhabitants of East Florida.

“*Be it enacted, &c.*, That the Secretary of the Treasury be, and he hereby is, authorized and directed to pay, out of any money in the treasury not otherwise appropriated, the amount awarded by the judge of the superior court at St. Augustine, in the Territory of Florida, under the authority of the 161st chapter of the acts of the 17th Congress, approved March 3, 1823, for losses occasioned in East Florida by the troops in the service of the United States, in the years 1812 and 1813, in all cases where the decision of the said judge shall be deemed by the Secretary of the Treasury to be just: *Provided*, That no award be paid except in the case of those who, at the time of suffering the loss, were actual subjects of the Spanish government: *And provided also*, That no award be paid for depredations committed in East Florida previous to the entrance into that province of the agent or troops of the United States.

“SECTION 2. *And be it further enacted*, That the judge of the superior court of St. Augustine be, and he hereby is, authorized to *receive, examine, and adjudge* all cases of claims for losses occasioned by the troops aforesaid, in 1812 and 1813, not heretofore presented to the said judge, or in which the evidence was withheld, *in consequence of the decision of the Secretary of the Treasury that such claims were not provided for by the treaty of February 22, 1819, between the governments of the United States and Spain*: *Provided*, That such claims be presented to the said judge in the space of one year from the passage of this act: *And provided also*, That the authority herein given shall be subject to the restrictions created by the provisos to the preceding section.”—(6 Statutes at Large, p. 569.)

At the time of the passage of this act, claims for injuries in East Florida, in 1812 and 1813, amounting to \$214,676, had been presented to the judge of East Florida, and decrees in favor of the claim-

ants had been made for the sum of \$44,338. The first section of this act made an appropriation for the payment of the awards which were made previous to its passage, accompanied by provisions prohibiting payment unless the "claimants were actual subjects of the Spanish government," and unless the depredations were committed after "the entrance into that province (East Florida) of the agent or troops of the United States," upon the ground that such claims would not be within the provisions of the treaty.

This act made no other appropriation, and no claim is now made under any of the awards provided for by the first section thereof, as no award of damages under the name of interest had been made before its passage.

The claims provided for by the second section of this act being claims not then presented to the judge, or, if presented, being cases in which proceedings had been suspended "in consequence of the decision of the Secretary of the Treasury that such claims were not provided for by the treaty," were left to be paid out of the general appropriation made by the second section of the act of March 3, 1823, passed to carry the treaty into effect, and have been so paid, as far as payments have been made.

Whenever the term of office of the judge of the superior court for the district of East Florida expired by death, resignation, or removal, the duty of adjudicating these claims was, with full sanction of the Secretary of the Treasury, performed by his judicial successor; and when Florida was admitted into the Union as a State, and the federal jurisdiction of the territorial judges was transferred to the United States judge, the duty of adjudicating such of these claims as yet remained to be decided, was devolved upon the judge of the district court of the United States for the northern district of Florida by the act of February 22, 1847—(9 Statutes at Large, p. 130.)

A number of the claimants having failed to present their claims to the judge within the time limited by the second section of the act of June 26, 1834, aforesaid, Congress, by an act approved on the 3d of March, 1849, directed the United States judge for the northern district of Florida to "receive and adjudicate" their claims, and directed that they should be "settled," not adjudicated at the treasury, as other claims under the act of June 26, 1834, with the following provisos:

"Provided, however, That the petition for the allowance of such claim shall be presented to said judge by the proper parties entitled to prefer the same within one year from the passage of this act: And provided also, That said parties shall, respectively, allege in such petition, and prove to said judge reasonable cause for such petition not having been presented within the time prescribed and enacted by said act of June 26, 1834."—(9 Statutes at Large, p. 788.)

After the passage of the act of June 26, 1834, recognizing the injuries of 1812 and 1813 to be within the provisions of the treaty, and requiring the judge of the superior court of St. Augustine to "receive, examine, and adjudge" the same, the Hon. Robert Raymond Reid, then the judge of the said court, proceeded to adjudicate the said claims, and to report his decisions to the Secretary of the Treasury, according to the provisions of the act of March 3, 1823,

passed to carry the said treaty into effect. After he retired from office, the same duties continued to be performed by his successor, the Hon. Isaac H. Bronson, until Florida was admitted into the Union as a State, when Judge Bronson, having been appointed United States judge for the northern district of Florida, continued and closed the said duties. The mode of proceeding in these cases, prescribed by the judge, and sanctioned by the Treasury Department, was as follows:

“Each claimant presented his claim by petition, verified by oath, and alleging, as required by the rules prescribed by the court, the nature and extent of his losses, and the facts necessary to show that the claim was within the provisions of the treaty. The judge examined the witnesses when personally brought before him, and when their testimony was taken by deposition, he selected and instructed the commissioners, and propounded cross-interrogatories to the witnesses, as is shown by the report of the Court of Claims in the case of Humphreys, and by the records remaining on file in the Treasury Department.

“All the evidence was recorded, and a copy of it, and of the decree of the judge, when ‘*in favor of the claimants*,’ was reported to the department for payment, as required by the act of 1823.

“In making up his awards or decrees, the judge allowed, as the just and proper measure of damages under the law of nations necessary to fulfil the stipulations of the treaty, the proved value of the property at the time of the injury or loss; and, by way of satisfaction for the further loss of the use, fruits, or profits of the property, whilst wrongfully deprived of them, and of the just satisfaction for them which the law of nations required, and during the period that no provision of law existed for the presentation and payment of said claim, he added five per cent. interest, by way of damages, and as an equitable measure of damages, to the original value of the property, (being the legal rate of the country,) and made a formal decree that the United States pay the same to the claimants. The decrees thus made *in favor of the claimants* were, as before stated, reported to the Secretary of the Treasury for payment; when *against them*, they were deemed *final*, and were never reported to the Secretary. The report of the Secretary of the Treasury to the Senate shows that more than half the amount of the claims presented were thus finally disposed of by the judges, thus making the decision of the judges *against* claimants final and conclusive, whatever may have been the effect of decisions *in their favor*.”

Judge Reid’s reasons for allowing interest by way of damages, as reported to the Secretary of the Treasury, are as follows:

“I am required by the statute to receive, examine, and *adjudge* these claims for losses. In performing this duty, I have allowed, because it seemed just and equitable to allow it, *interest* upon the amount or value of the property ascertained to have been lost. The rate of interest existing in the province at that time (1812 and 1813) was five per cent., and this is the sum allowed in all cases. I am sensible that this allowance will swell considerably the amount to be paid to the claimants, but I do not perceive how it could be avoided. If we lose sight of the national character of one of the parties, and

suppose two private persons engaged in a dispute about an injury to property, the tribunal to which resort is had, in adjusting the damages due by the one to the other, will consider the value of the property destroyed, in connexion with the time for which the owner has been deprived of the use and enjoyment of his property. The first being ascertained in money, a compensation for the last may best be regulated by reverting to the rate of interest allowed by the law of the country where the wrong was done.”—(Report of Court of Claims in Robert Harrison’s case, p. 78.)

When these claims reached the treasury they were subjected to the same scrutiny as claims which had never been adjudicated.* The Secretaries claimed the right to go fully into the merits of the claims upon the evidence reported, and called upon the judge for further evidence whenever they entertained a doubt. In regard to the damages decreed for the loss of the use and fruits of the property, it was rejected in all instances, under the mere *usage* of the Treasury Department in reference to domestic pecuniary demands, without any reference to the treaty or the law of nations.

Secretary Woodbury’s first decision, disallowing the damages decreed under the name of interest, was made on the 20th of December 1836, in the case of John Gianopoli, in which, in allowing the claim, he added the words: “with the exception of interest, which it is believed has not been allowed in claims similarly situated.”—(1 vol. *Judicial Records, Treasury Department, folio 145. Letter of William L. Hodge, Acting Secretary of the Treasury, to Hon. Wm. A. Graham, dated June 9, 1851. Ex. Doc. No. 68, 2d sess. 24th Cong., H. R.; Ex. Doc. No. 98, 3d sess. 25th Cong., H. R.*)

Mr. Secretary Guthrie, in a letter to the Attorney General in relation to these claims, dated the 4th of November, 1854, says:

“This latter part of these claims (the interest) awarded by the judges, was first rejected by Mr. Secretary Woodbury, under ‘*the usage of the Treasury Department*,’ in the case of the heirs of John Gianopoli, the sum allowed as the value of the property on which was paid on the 5th June, 1837, as shown by the accompanying papers; and the decision thus made *has continued to govern in these cases to the present time.*”—(Report of the Court of Claims in Harrison’s case, p. 81.)

Secretaries Ewing, Forward, and Bibb, who acted on these claims after Mr. Woodbury, and followed his precedent in rejecting the part of the damages or satisfaction decreed by the judges under the name of interest, have all certified that they did so under the mere *usage* of the Treasury Department, and without any reference to the treaty or law of nations, and without any inquiry whether the payment of that part of the award of the judges was necessary to make the “satisfaction” stipulated by the treaty, and they all express the opinion that such payment is necessary to fulfil the stipulation of the treaty.—(See Report of the Court of Claims in Harrison’s case, pp. 100 to 114; also the report of Judge Bibb, assistant Attorney General to the Attorney General, from p. 81 to p. 109 of the same document; also the state-

* Report of Court of Claims in Robert Harrison’s case, pp. 34, 35, 36 and 37.

ment of Mr. McClintock Young, late chief clerk of the Treasury Department, from pages 34 to 37 of the same document.)

Mr. Secretary Walker referred the question of the claimant's right, under the treaty and law of nations, to this part of the damages decreed by the judges, to the Attorney General in 1849. An opinion was given in 1851 affirming that right, and declaring the inapplicability of *departmental usage to treaty cases*, but advising the Secretary to adhere to Mr. Woodbury's precedent which had been followed by his successors in these cases, and leave the claimants to seek redress in Congress.

A similar reference was made by Mr. Secretary Guthrie, and a similar answer from the Attorney General given, with a recommendation that the whole class of claims be referred by the department to Congress.

In 1851, after the opinion of the Attorney General was given, recognizing the right of the claimants under the treaty and law of nations to the damages decreed under the name of interest, but advising an adherence to Mr. Woodbury's precedent of rejecting it under the usage of the department, and leave the claimants to seek relief in Congress, one of the claimants petitioned Congress for such further legislation as might be necessary to the full execution of the treaty, by the payment of that portion of the damages allowed by the judge under the name of interest, and rejected by the Secretary of the Treasury under the usage of his department. The memorial was referred to the Judiciary Committee of the Senate, and that committee reported that the acts already passed were intended and were sufficient to carry the treaty into full effect, and that "no additional legislation was necessary;" and this report was unanimously concurred in by the Senate.—(Report of the Court of Claims in Harrison's case, pp. 118, 119, 120.)

Having shown that the claims of the memorialists are within the treaty, and so declared by Congress, the next duty of the committee is to ascertain the extent of the "satisfaction" which the United States stipulate in the treaty shall be made for the injuries suffered by the Spanish inhabitants of Florida during the invasion by the American army.

The question as to what constitutes satisfaction in a case like the present is not a new one. It has often been decided, and was long since settled. The "satisfaction" to be made by the United States, in pursuance of the stipulation of the 9th article of the treaty of 1819, is a satisfaction for "injuries" suffered by the Spanish inhabitants of Florida from the acts of our army in 1812 and 1813. The term "satisfaction," when used to measure the compensation to be made for injuries to property in violation of the law of nations, embraces the fullest measure of redress enjoined by the great international code designed to regulate the intercourse and settle the controversies of nations.—(See Wheaton on International Law, pp. 340, 341, 342, and 576; 1 vol. Kent's Com., p. 61; Vattel, book 2, ch. 18, sec. 324; Ib., book 3, ch. 11, sec. 185; Campbell's Grotius, vol. 2, book 2, ch. 17, p. 192.)

Satisfaction, when used in the sense of redress for injuries to property consists in the value of the property taken or destroyed, and

damages for its detention or the loss of its use until the time of payment. In the case of the *Pacific Insurance Company vs. Conrad*, 1 Baldwin C. C. R., p. 138, Judge Baldwin says: "The value of the property taken with interest from the time of the taking down to the time of the trial, is generally considered as the extent of the damages sustained." Rutherford, book 1, ch. 17, sec. 5, pp. 390, 391, lays down the rule in the following words: "In estimating the damage which any one has sustained when such things as he has a perfect right to are taken from him, or withholden, or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of a thing, is likewise the owner of such fruits or profits; so that it is as properly a damage to be deprived of them, as to be deprived of the thing itself."

In the case of the *Amiable Nancy*, 3 Wheaton, 560, the Supreme Court of the United States says: "It was, after strict consideration, held, that the prime cost or value of the property lost, at the time of the loss, and in case of injury, the diminution in value by reason of the injury, with *interest* upon such value, afforded the true measure of assessing the damages." In the case of the *Lively*, 1 Gallison R., 315, Judge Story says: "The proper measure of damages in cases of illegal capture, is the prime value, and interest to the day of the judgment."

The rule as to the measure of satisfaction is the same in the prize courts of Great Britain.—(Case of the *Acteon*, 2 Dodson, p. 84.)

Prize courts are governed by the laws and usages of nations, 1 Kent's Com., pp. 19, 68, 69, 70; Wheat. Int. Law, p. 47; *Adeline and Cargo*, 9 Cranch, p. 191, also 242.) Wheaton on International Law, p. 341, says: "If a nation has taken possession of what belongs to another, if it refuses to pay a debt, or repair an injury, or to give adequate satisfaction for it, the latter may seize something of the former, and apply it to its own advantage until it obtains payment of what is due, together *with interest and damages*."

The civil and common law are governed by the same rule in measuring damages in cases of conversion or trespass. The value of the property with interest, *by way of damages*, from the time of the trespass or conversion, is the rule of both.—(Sedgwick on Measure of Damages, pp. 549, 550, 551; 7 Wend., 354.) For the rule of the civil law, see Domat., vol. 1, lib. 3, tit. 5.

The rule by which damages, in the name of interest, are allowed in cases like the present is supported by an unbroken current of authorities, derived as well from writers on the law of nations as from the decisions of the highest courts in Great Britain and the United States; and the authorities and precedents drawn from these sources have been invariably insisted on by the government of the United States, when seeking redress from other nations for injuries which our citizens have sustained at their hands. Our government has demanded, and uniformly obtained, the fullest measure of indemnity, interest as well as principal being on all occasions exacted. In these cases the United States are solemnly bound by the treaty to Spain that satisfaction should be made for the injuries suffered by her subjects from the operations of our army. What was meant by the term

satisfaction, taken in connexion with the rule of the law of nations known and understood by both parties, and always acted upon by the United States in seeking indemnity for injuries due to their own citizens at the hands of others? Did it mean that those who suffered injuries should be indemnified; that they should be paid the amount of the losses they had sustained? Or did it mean that they should be paid a part of them—the principal value of the things lost, without compensation for the deprivation of the use? Would such part payment make a man whole? Would it be a satisfaction? Would a man who had been injured by the destruction of his cattle, or the burning of his house, be satisfied or indemnified by receiving, twenty years afterwards, the mere value of his property at the time it was destroyed? Was it no loss to be deprived of the use of his cattle during twenty years? Was there no damage in being deprived of the shelter of his house during the same period? To satisfy or make a man whole, under such circumstances, he must be paid immediately on the happening of the injury, so that by using the money thus received he can at once replace his cattle or rebuild his house; or, otherwise, he must be allowed damages for being deprived of the use of his cattle or the shelter of his house; and such damages are generally ascertained by computing interest, at the usual rate, on the value of the property from the time of the injury until payment is made to the owner. This, as has been stated already, is the rule of the law of nations; it is also the rule of the Supreme Court of the United States, and of the courts, as the committee believe, of every State in the Union. In support of this position, a host of authorities might be cited; but it is deemed unnecessary to multiply cases to sustain a usage believed to be nearly, if not quite, universal in reference to cases like the present.

It may be proper, however, to refer to the practice of our own government, and point out some of the cases in which interest, in addition to the value of the property injured or destroyed, has been claimed and allowed in behalf of our own citizens.

The United States, in the construction of their treaties, and in all their intercourse with other nations, have uniformly insisted upon and sanctioned the measure of redress decreed by the Florida judges in these cases, as affording the lowest measure of satisfaction for property taken or destroyed in violation of treaties, or of the laws and usages of nations.—(Vide opinion of Mr. Wirt, Attorney General, printed Opinions, pp. 568, 569, 570, 571; letter of Mr. Clay, Secretary of State, to Mr. Vaughan, British minister, of the 15th April, 1826; Wheaton's Life of Wm. Pinckney, pp. 196, 198, 265, (note,) 371; American State Papers, Foreign Relations, vol. 2, pp. 119, 120, 387, 388, 283; Ex. Doc. No. 32, 1st sess. 25th Congress, Ho. Reps., p. 249; Ex. Doc. Ho. Reps., 2d session 27th Congress, vol. 5, doc. 291, p. 50; American State Papers, Foreign Relations, vol. 4, p. 639; Elliott's Diplomatic Code, vol. 2, pp. 625, 605.)

These citations will show that interest, in addition to the value of the property illegally taken, was claimed and allowed under the 7th article of the treaty of 1794 with Great Britain, (8th Statutes at Large, p. 119;) under the word "losses," simply, in the 21st article of the treaty of 1795, with Spain, (8th Statutes at Large, p. 150;) under

the words "just indemnification for private property carried away," in the convention of 1818, between the United States and Great Britain, (8th Statutes at Large, p. 249 ;) under the law of nations, by Brazil, without any treaty stipulations ; under the words "injuries to property," the same words employed in the 9th article of the Florida treaty, in the convention of the 11th April, 1839, between the United States and Mexico, (8th Statutes at Large, p. 526 ;) under the 14th article of the treaty of 2d February, 1848, between the United States and Mexico, (records of the board of commissioners, on file in the State Department.) The indemnity in this case was paid by the United States to their own citizens in behalf of Mexico, in consideration of the cession of California and new Mexico.

These authorities also show that the United States, in their negotiations with other nations, have recognized no other rule of satisfaction for injury to property, in violation of the laws of nations, than that decreed by the Florida judges in these cases ; and that whenever they have been able to obtain a treaty stipulation for "indemnification," for satisfaction for "losses," for satisfaction for "injury to property," or in any form of language implying compensation or satisfaction for injury to property in violation of treaty stipulations or of the laws of nations, they have uniformly claimed and received, or paid out of their own treasury, the same measure of satisfaction.

Under the treaty of Ghent, between the United States and Great Britain, a difference arose, which was referred to the arbitrament of the Emperor of Russia, who decided that the United States were entitled "to a just indemnification from Great Britain for all private property carried away by the British forces." The members of the joint commission, Messrs. Langdon Cheeves and Jackson, differed as to the measure of damages. Mr. Cheeves insisted on interest from the time of taking the property, in addition to its value, as the measure of damages. He said the claim was not for interest, *eo nomine*, but adopted as a mitigated rule of damages or compensation, founded on the pecuniary value of the property withheld ; and that in such cases the common law and civil law both allowed reparation or compensation for *the loss of the use* of the property withheld from the commencement of the tortious detention. The rule of the public law, he said, was the same ; and, that if the property captured and taken away in February, 1815, were returned now uninjured, it would not repair the loss sustained by the taking away and detention. The claimant would still be without indemnity for the *loss of the use* of his property for ten years, which was nearly equivalent to the original value of the principal thing. Mr. Wirt sustained the rule as stated by Mr. Cheeves.—(Opinions of Attorney General, vol. 1, p. 499, of May 17, 1826.) Mr. Clay, in a letter dated April 15, 1826, to the British minister, Mr. Vaughan, declared "that interest was a just component part of the indemnification which the convention stipulated." This rule was finally recognized by the British government, though the amount paid in gross was something less than the interest would have been if computed at the ordinary rate.

In the negotiations between the United States and Great Britain, in relation to the cases of the "Encomium" and "Comet," Mr. Stevenson, the American minister, under the instructions of the State

Department, laid down the following propositions, which were fully admitted by Lord Palmerston. These propositions, it will be seen, relate to the measure of damages proper to be allowed for the taking and detention or destruction of property, in several distinct points of view.

1. "That if a duty to be performed be not the payment of money, but the performance of some collateral act, that is, the restitution of property, (other than money,) then, in lieu of interest, damages are awarded, and these damages together with the property to be returned, are to constitute the indemnity of the sufferer for the loss he may have sustained by reason of the non-performance of this duty."

2. "That the measure of these damages will be the probable fruits or profits which might have been derived from the property or thing detained, during the period that the duty of restoring it was not performed."

3. "That if restitution of the property cannot be made, by reason of its loss, or from any other cause, then its value may be estimated in money, and this equivalent will stand in the place of the thing itself; and when reduced to a pecuniary standard, interest upon the equivalent is allowed in lieu of the fruits and profits, and flows, as in other cases of money not paid, as the necessary consequence of the non-performance of the duty of restitution."

4. "That, although under the laws of Great Britain and the United States, it is admitted that, in transactions between individuals, interest, *eo nomine*, would not be due on unliquidated demands of a nature purely and exclusively pecuniary, except from the period of their liquidation; yet it is equally true that, by those laws, when reparation is sought for the loss of property, (in cases like the present,) the value of the property, together with an equivalent for the use of it, from the commencement of an illegal detention, *is always allowed*."

5. "That these are principles sanctioned as well by the law of nations as those of the civil and common law, by the authority of precedents between Great Britain and the United States, a few leading references will satisfactorily show. To these the undersigned begs leave to refer Lord Palmerston."

Mr. Stevenson then cites Grotius, as cited in support of the Florida claims; also, 2d vol. Campbell's Grotius, p. 360; vol. 6, sec. 1224. Cites Domat, to show that fruits and profits were allowed by the civil law, as cited by Judge Bronson. Cites Pothier, Code Napoleon, Blackstone, Vesey's R., 2 Brown's C. C., and says:

"It (interest) has, moreover, *never been refused* in claims like the present, where a money equivalent has been substituted as a compensation for property wrongfully withheld, and for which the party had agreed to make reparation."

Mr. Stevenson then shows that interest was allowed under the 6th and 7th articles of Jay's treaty in 1794, and refers to the opinion of Sir John Nicoll, one of the British commissioners under the 7th article of said treaty; also to the decision of Sir William Scott, in the case of the "Acteon," cited by Judge Bronson, and proceeds to say that "the general doctrine, then, is, that he who withholds what he ought to return does an injury for which he is bound to indemnify the sufferer; that the proper measure of indemnification is the thing

which is withheld, together with its reasonable fruits or profits accruing during the period that it is withheld ; that if, however, restitution of the property cannot be had, justice finds its compensation or its value as an equivalent, and interest on it is resorted to as the best standard to ascertain the reasonable profits of money."

Having thus shown that the "satisfaction" stipulated in the treaty required that damages or interest for the detention of the property, or loss of its use, should be added to its original value, as well by the constant and uniform practice of our own government, as by the rules of the law of nations and of the common and civil law, it follows as a necessary and unavoidable consequence, that it was the duty of the Secretary of the Treasury to pay the amounts awarded to the memorialists and other claimants of the same class by the Florida judges, in full, original value and interest. The memorialists and all other claimants of the same class had as just a right to the damages awarded by the judges for the loss of the use of the property which had been destroyed or carried away by our troops, as to the original value of the said property ; and the injustice of refusing to pay the latter would have been in no respect greater than was the injustice of refusing to pay the former ; and that damages for the injury done to the claimants by the loss of the use and enjoyment of the property during the many years that elapsed before its original value was repaid are, under the law and usages of nations, as well as by the rules of common and civil law, as much a part of the satisfaction contemplated by the treaty as was the value of the property destroyed.

The sums due to these claimants, and awarded to them as damages for the deprivation of the use of their property, have not been paid, solely in consequence of a decision of Mr. Woodbury, Secretary of the Treasury, made under a departmental usage in reference to domestic pecuniary demands.

That a treaty, being a contract between two independent nations, is to be controlled in its construction, not by the local usages of either, but by the universal rules of the international code, is too clear for argument. The committee believe that Mr. Woodbury would have taken this view of his duty in the premises if it had been presented to his attention. While the decision of Mr. Woodbury has not been reversed, the right of these claimants under the treaty to the payment of the awards of damage, under the name of interest, has not been denied by any Secretary of the Treasury who has acted upon the awards of the judges, or any Attorney General, since Mr. Woodbury's time, but has been expressly admitted by Secretaries Spencer, Bibb, Corwin, and Forward, and by Attorneys General Crittenden and Cushing.

The Court of Claims, in deciding upon the case of the claimants, also seem to admit their rights under the treaty, although regarding them as without remedy under the acts of Congress passed to give effect to the treaty, construed as those acts are by the Court of Claims, so as to give the Secretary of the Treasury an unlimited power to revise and reduce awards made in favor of individuals by the Florida judges. And that there is no appeal from the Secretary of the Treasury to any judicial tribunal, is settled by the opinion of the Supreme Court of the United States.

The claimants are now, therefore, before the tribunal of Congress, which is uncontrolled by departmental usages or decisions, or by prior legislation, and which is now called upon to do justice, and cause the stipulations of the treaty of 1819 to be carried into effect.

If that treaty requires that the claimants should be indemnified for the loss of the use of their property, as well as for the loss of the original value of their property, the duty of this government to make such indemnification is not impaired by the erroneous and inadvertent decision of one of its executive officers. This government can never set up against the reclamations of Spain an adjudication by the Treasury Department manifestly in violation of the law of nations. In the case of the *United States vs. the schooner Peggy*, 1 Cranch, 103, Chief Justice Marshall, in confirmation of this principle, said: "Whatever the decision of the court may be, *the claim upon the nation, if unsatisfied, may still be asserted.*"

It has been much controverted in the history of these cases whether the decisions of the Florida judges were judicial and final; and if not, to what extent a revising power was intended to be conferred upon the Secretary of the Treasury by the acts of Congress relating to the subject. The committee have not regarded it as necessary to enter into these controversies. It is sufficient that the original value of the property belonging to the claimants, for the destruction of which they are entitled to indemnity, has been settled by tribunals to which that duty was assigned by this government; that the original value has been admitted and paid at the treasury, after a careful revisal, with a deduction so slight that the substantial correctness of the decisions in Florida is not impeached, and that the only question which now remains relates to the duty of indemnifying the claimants for the loss of the use of their property. This duty, independently of the decisions of the Florida judges, your committee, for the reasons hereinbefore given, regard as entirely clear.

The amount to be paid, if the views of the committee are correct, is large; but this cannot alter their substantial justice nor discharge the duty. If it is unjust and in violation of the national faith to withhold the payment; the magnitude and evil consequences of this injustice and violation of national faith, and the hardships which result from them to individuals, are augmented in precise proportion to the amount withheld.

It is the interest of the United States, as a commercial nation, with property exposed to violence in every part of the world, to resist any change or relaxation of the rule of public law which prescribes, as the measure of indemnification for injuries to property, the restoration of its original value, together with compensation for the loss of its use. This government, which has always heretofore insisted upon this rule, cannot insist upon it hereafter as against others, if it shall finally decline to act upon the rule in these cases.

The committee, therefore, report a bill requiring the payment of that portion of the damages awarded by the judges, under the name of interest, so far as the original value awarded by the said judges has been approved at the Treasury Department, and recommend its passage.

ROBERT HARRISON AND OTHERS.

MARCH 3, 1859.—Ordered to be printed.

Mr. MOORE, from the Committee on Claims, made the following

MINORITY REPORT.

The undersigned, not concurring in the report of the majority of the Committee on Claims in the cases of Letitia Humphreys, administratrix of Andrew Atkinson, deceased, and of Robert Harrison, beg leave to submit very briefly the reasons which have constrained them to dissent therefrom.

In the treaty of 1819, between Spain and the United States, (9th article,) is the following stipulation:

“The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American army in Florida.”

These claims, it is alleged, arise under the 9th article of said treaty. In order to establish their validity these facts must be shown—

1st. That these claims were embraced within the provisions of said treaty.

2d. That the United States had hitherto failed to discharge its duty by making provision for their payment, although solemnly bound, by treaty stipulation with Spain, to pay them.

The undersigned are of opinion that neither of these propositions can be sustained.

There were injuries committed by the American forces on the Spanish inhabitants of Florida in 1812 and 1813, and also in 1818. Now, the question arises, was it intended by the treaty of cession of 1819 to provide for the payment of all the injuries which had at any time been committed by the American forces on the Spanish inhabitants of Florida, or only those which had been committed the year before by the army under General Jackson? If there had been no terms of limitation employed, it might well be urged that it was intended to embrace all the injuries suffered by these inhabitants of Florida prior thereto. But, as if to prevent any such construction, the treaty provides for the satisfaction only of those claims arising from injuries caused “*by the late operations of the American army in Florida.*”

This language is too plain to admit of any doubt as to its construction, but it has been pretended that in the Spanish version of this treaty no word answering to *late* is to be found. But this is answered by the simple statement, that both the English and Spanish versions of the treaty were originals, as it was signed in both of these languages, and both were equally binding upon the contracting parties. This was the decision of the Committee on Foreign Affairs of the House of Representatives in 1826; the chairman of said committee, the Hon. John Forsyth, having presented an able report adverse to the allowance of these claims, which was concurred in by the House, and in which he demonstrated with his usual clearness and ability that these claims for losses sustained in 1812 and 1813 were not embraced within the treaty; and he also showed conclusively that there was, in fact, no difference in the Spanish and English versions, but that both referred to the *late operations* of the American army. The undersigned begs to refer to the able report of Mr. Forsyth, to be found in vol. 1, Reports of Com., 1st sess. 19th Congress, (Report No. 112.)

This construction, too, was uniformly given to the 9th article of said treaty by all the Secretaries of the Treasury, from 1823, when an act of Congress was first passed to carry out the provisions of this treaty, down to 1834. During all that period every claim was disallowed by the Secretaries of the Treasury, save those which arose from injuries done by the American army in 1818.

In 1834, however, an act was passed, authorizing the Secretary of the Treasury to pay such claims as had been allowed by the judges of Florida, (acting as commissioners under the act of 1823,) for losses occasioned by the troops of the United States in the years 1812 and 1813. In pursuance of this act of 1834, proof was taken to establish the claims now under consideration, and numerous others. The whole amount of the principal sum allowed has been paid and satisfied, and these claims are presented for interest alone.

It does not follow that these claims were embraced within the meaning of the treaty, because the act of Congress of 1834 authorized the Secretary of the Treasury to pay them. That construction was binding, it is true, upon the latter officer, but it certainly is not upon any subsequent Congress. It is a fact not deemed unworthy of being mentioned, that in 1834, before the passage of the act authorizing the Secretary of the Treasury to pay such claims as had been allowed by the judges in Florida for their losses sustained in 1812 and 1813, and which *he might deem just*, the delegate of Florida, the Hon. Mr. White, was asked by the Hon. Mr. McCay, chairman of the Committee of Ways and Means of the House, what would be the amount of these claims, and he replied not exceeding \$40,000.—(Vide Cong. Globe, 23d Cong.) While, in fact, more than one million of dollars have since been paid therefor; and these claims for interest alone now exceed one million and a half of dollars.

Even if these claims were originally embraced within the terms of that treaty, the undersigned entertain not the shadow of a doubt that the claimants have been fully paid. But without going into all the details which tend to fasten that conviction upon their minds, the undersigned desire to address themselves briefly to the second proposition,

which, as before stated, the claimants must establish affirmatively, before their claim can be sustained.

Has the United States failed to perform its treaty stipulations with Spain? The majority of the committee seem to think that the good faith of the nation requires the payment of these claims. We think our government has fully discharged every obligation which it assumed. An act was passed in 1823, authorizing the judges of the Territory of Florida to adjust all claims arising under that treaty. They were required to "*report to the Secretary of the Treasury, who, on being satisfied that the same were just and equitable within the provisions of said treaty, should pay the amounts thereof,*" &c. The Secretaries paid the principal in every instance, but refused to pay the interest.

What was the extent of power conferred on these judges? This has been judicially decided by the Supreme Court of the United States in the case of *The United States vs. Ferriera*, (13 Howard's Reports,) arising under this 9th clause of the treaty with Spain.

The Chief Justice, in delivering the opinion of the Court, says: "*The law of 1823, therefore, and not the stipulations of the treaty, furnishes the rule for the proceeding of the territorial judges, and determines their character.*" * * * *

"It is to be a debt from the United States upon the decision of the Secretary, but not upon that of the judge. It is too evident for argument on the subject that such a tribunal is not a *judicial* one, and that the act of Congress did not intend to make it one. The authority conferred on the respective judges was nothing more than that of *commissioners* to adjust certain claims against the United States. * * The decision is not the judgment of a court of justice. It is the award of a commissioner. The act of 1834 calls it an award."

What, then, let us here inquire, are the powers of a commissioner appointed under a treaty like this of 1819 between Spain and the United States? It has been decided by the Supreme Court of the United States that the decisions of such commissioners are conclusive—that is, the decision of the judges in Florida, when approved by the Secretary of the Treasury. The opinion of the Supreme Court, in the case before referred to, is so decisive of this case that the undersigned desire to call attention to an additional extract:

"Nor can we see any ground for objection to the power of revision and control given to the *Secretary of the Treasury*. When the United States consent to submit the adjustment of claims against them to any tribunal they have a right to prescribe the conditions on which they will pay; and they had a right, therefore, to make *the approval of the award by the Secretary of the Treasury one of the conditions upon which they would agree to be liable*. No claim therefore is due from the United States until it is sanctioned by him, and his decision against the claimant for the whole or a part of a claim, as allowed by the judge, is *final and conclusive*. It cannot afterwards be disturbed by an appeal to this or any other court, or in any other way, without the authority of an act of Congress. It is said, however, on the part of the claimant that the treaty requires that the injured parties should have an opportunity of establishing their claims by a process of law; that process of law means a judicial proceeding in a court of justice, and

that the right of supervision given to the Secretary over the decision of the district judge is therefore in violation of the treaty. The Court think differently; and that the government of this country is not liable to the reproach of having broken its faith with Spain. The tribunals established are substantially the same with those usually created when one nation agrees by treaty to pay debts or damages which may be found to be due to the citizens of another country. This treaty meant nothing more than the tribunal and mode of proceeding ordinarily established on such occasions, and well known and well understood when treaty obligations of this description are undertaken."

This decision of the Supreme Court of the United States is based upon and construes this 9th clause of the Florida treaty; it covers the whole ground assumed by the advocates of these claimants; it stands unreversed, and while it stands as the authoritative interpretation of this treaty, by no sophistry or ingenuity can it ever be shown that the United States have failed to perform the stipulations of this treaty in good faith, and in every particular. It seems to the undersigned that it would be a far easier task to prove that our government has exhibited an excess of liberality in its construction of this treaty, and that vast sums of money have already been paid to these and other claimants under that treaty which the government was never legally bound to pay. But waiving this and other considerations for the present, the undersigned beg to refer to the able argument of Senator Butler, in the Senate of the United States, upon these identical claims, in which he said: "I have never known a claim with less justice, or one which, in my opinion, has less in it to commend it to us."

And again he says: "Mr. White, the Florida delegate, insisted with great vehemence and earnestness that the claims were within the treaty, his chief ground being alleged error in translation; but he was overruled."

"I do not care who are concerned in it; the claim that they were in the treaty was an impudent pretension. They were not within the treaty. The act was a gratuity, an indulgence, a kindness, a liberal donation—nothing more."

(*Vide* also the debate in the House of Representatives upon these claims, in the Congressional Globe, 2d session 33d Congress, and particularly the speech of the Hon. Mr. Orr, of South Carolina, against them, on pages 734 and 735.)

The majority of the committee, both of the House and of the Senate, seems to *assume as indisputable* that these claims were embraced by the treaty with Spain, and that they were just, equitable, and still unsatisfied; and with this assumption, they confine themselves mainly to the discussion of the question: What is the true measure of damages for injuries or losses sustained by the Spanish inhabitants of Florida? And the conclusion to which they arrive is, that this is "the value of the property taken, with interest from the time of the taking," &c. The view taken of these claims by the undersigned renders it wholly unnecessary that they should enter at large upon the discussion of this question. For even if was conceded that the above constituted the general rule, still it cannot be invoked in favor of these claims, which, as we believe, have no merit in themselves—were never em-

braced by the treaty, and to pay the principal, even, which has been paid, no obligation was ever imposed upon our government.

But it may be said that our government is estopped from denying the validity of these claims, by having paid the principal sums claimed. We do not concur in this opinion. So far from acknowledging their obligation to pay these claims, this government has again and again, and *through all its departments, executive, legislative, and judicial*, utterly denied them and rejected them. To show this we need but refer briefly to the following facts:

1. These claims were uniformly rejected, both as to principal and interest, by each Secretary of the Treasury from 1823 to 1834.

2. These claims (now presented for *interest only*) have been uniformly rejected by every Secretary of the Treasury from 1836 down to the present time, commencing with that eminent statesman and jurist, Judge Woodbury.

These decisions of the Secretaries of the Treasury were in accordance with the advice and opinions of the Attorneys General of the United States.—(Vide opinion of Attorney General C. Cushing, Ex. Doc. 82, and also of Attorneys General Crittenden, Legare and Nelson, p. 333, vol. 5.—Opinions of Attorneys General by Hall, Congress 2, do. pp. 1392, 1420.)

So much for these branches of the *executive* departments.

In the legislative departments they have hitherto fared no better.

At the first session of the 19th Congress the Committee of Claims of the House, to whom these claims had been referred, reported adversely thereon. That report was laid on the table without any objection being made, and was therefore concurred in by the House. This was in December, 1825.

At the same session of Congress, these claims were again referred to another committee of the House, that of Foreign Affairs, and that committee, on the 10th of March, 1826, also reported adversely to these claims, through their chairman, the Hon. John Forsyth, to which reference has been before made; and that report was also laid on the table, and therefore concurred in by the House.

Without calling attention to all of the different times on which these claims have been considered by committees, and by the two Houses of Congress, we desire to call attention to the discussion which took place in the House of Representatives at ——— session of the 33d Congress, and the action of the House on a bill providing for the payment of these claims; when, after a *full and free discussion*, that bill was rejected. So much for the legislative action on these claims.

Now as to the action of the judicial department of the government.

And first, we again refer to the decision of the Supreme Court in the case of the United States *vs.* Ferreira, 13 How.

2d. After a full hearing, the case being *argued* and *re-argued* by able counsel, the Court of Claims have also since decided adversely to these claims. The lucid opinion of Judge Blackford concludes as follows:

“The remaining question is, whether the decision of the Secretary of the Treasury against the claim for interest is not final and conclusive. It appears to us to be very clear that the Secretary’s decision against the claimant puts an end to the demand. This judgment is

sustained by the opinion of the Supreme Court of the United States in Ferreira's case, before cited. The decision of the Secretary, as to the law and the facts, must be considered as the decision of a competent tribunal of exclusive jurisdiction. It stands upon the same ground with the decision of a board of commissioners appointed by or under a treaty to determine upon the amount and validity of such claims as the one before us. That the decision of such a board is conclusive has been settled by the Supreme Court of the United States in the case of *Comegys vs. Vasse*.—(1 Peters, 212.) The same point is decided by this Court in the case of *Thomas vs. The United States*, and *Roberts vs. the same*.

“Considering, as we do, the decision of the Secretary against the claim for interest as final, we have not found it necessary to extend our inquiry on the subject of interest beyond that decision. It is the opinion of the Court, for the foregoing reasons, and upon the authorities cited, that the claimant has shown no ground for relief.”

After all this array of authority adverse to these claims, (and more might be produced if time and opportunity admitted), certainly it cannot be pretended that this government is now estopped from denying the justice or the validity of these claims. On the other hand, it does seem to the undersigned that these claimants ought to be estopped from still further urging their unfounded claims upon this government. But it seems that no matter how often a claim against the government may have been rejected, yet it never dies. Defeat at one session but stimulates to greater exertion at the next. Neither the decisions of courts, nor of committees, nor of Congresses, if adverse to them, seem to be considered as final and conclusive. The principle of *stare decisis* might well be applied to claims like these, which have been so often acted upon and so repeatedly rejected. *Interest reipublicæ ut sit finis litium*.

The undersigned have deemed it to be their duty to present to the House the grounds of their objection to the bill proposed by the majority of the committee for the payment of these claims; they only regret that want of time (it being now near the close of the session) has prevented the presentation of their views in a more compact and forcible manner.

SYDENHAM MOORE.
S. S. MARSHALL.

CONSTANCE BATEMAN.

(To accompany Bill H. R. No. 905.)

MARCH 3, 1859.--Ordered to be printed.

Mr. CURTIS, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Mrs. Constance Bateman, praying compensation for property taken and used and destroyed by the United States troops in the defence of Fort McHenry in the war of 1812, having had the same under careful examination, report the evidence to the House, with the recommendation that the sum of three thousand dollars be allowed to her in the manner provided for in the bill herewith submitted.

No. 1.

“UNITED STATES REVENUE CUTTER CAMPBELL,
“February 4, 1854.

“This is to certify that during the war with Great Britain I was appointed sailing master in the navy in 1812, and served under Commodore Joshua Barney in all the different engagements up to the close of the war with him; that I commanded one of the barges in the flotilla; that I was at the battle of Bladensburg; subsequently, that I was ordered by General Samuel Smith, as well as by Commodore Rogers, to take charge of the six-gun battery, with sixty-five men, on the Ferry branch; that I took to the battery on that occasion only sufficient rations for four days; that the enemy made their appearance in the Patapsco river, as well as two bomb ships, within the third day after I had taken charge of the battery. The bomb ships anchored within gunshot of Fort McHenry, thereby rendering it an impossibility to obtain rations from the Lazaretto, such being the confusion of things, and on the night of the 13th of September, and about the hours of one and two o'clock on the morning of the 14th, the enemy's barges, to the number of twenty-two, so represented, approached within from three to four hundred yards of my battery; that I opened a fire on the said barges, which checked their further approach up the Ferry branch, when they returned the fire for the space of about one hour, when they retreated and hove up signal rockets to their shipping to that effect, and in a few hours the two bomb ships weighed anchor and dropped down to North Point. On the following morning I picked

up two of their barges that had been sunk to the water's edge, and full of water, as well as on the third day several men were picked up on the shore between the six-gun battery and Fort McHenry, one of which was an officer, known by his uniform. After the battle, my provisions having become entirely expended, and having received orders from General Rogers to remain with all my force at the battery, fearing another attack, and being located directly alongside of a bountiful supply of a vegetable garden, with fruit, &c., to the extent of about three acres of land, my men in reality suffering for the want of provisions of all kinds, I gave orders to use such as were required; and at the same time finding it impossible to restrict my men committing depredations, as well as seamen attached to the battery above me, and also the troops of a portion of horse and others stationed directly in my rear, and they occupying the house and property attached to the garden, and at that time owned by a Mrs. Constance Bateman, she having been previously advised by the commanding officer to leave the premises, thereby the entire garden, as well as the dwelling, was in a most ruinous and wasteful state at the time the troops stationed in her dwelling left the premises. I therefore unhesitatingly assert the loss Mrs. Bateman met with was principally that of the troops occupying her house, together with all the out-houses, as well as having free access to the vegetable and fruit garden. And I further assert that the seamen under my command, as well as those under the command of Lieutenant Newcomb, subsisted off of the said garden for about the space of three weeks. Some time after the war I was called on by the husband of Mrs. Bateman to give a statement and aid him to prosecute a claim for the sum of five thousand dollars; that amount I refused most positively to sanction, but that I would agree to assist him in the payment of three thousand dollars. Mr. Bateman became exasperated, and finally we had a serious quarrel on the subject; since that period, until very recently, I had heard nothing more on the subject, when Mrs. Constance Bateman applied to me to assist her. I do now, on my oath as an officer and a gentleman holding a commission, think and believe the amount of three thousand dollars should be awarded her by the government of the United States as a remuneration to Mrs. Constance Bateman.

“JOHN A. WEBSTER,

“Captain of the United States Revenue Ship Campbell.”

“CITY OF NORFOLK, to wit:

“This day Captain John A. Webster personally appeared before me, Charles H. Shields, a justice of the peace for said city, and made oath to the truth of the annexed statement.

“Given under my hand this 4th day of February, 1854.

“CHARLES H. SHIELDS, J. P.”

No. 2.

“BALTIMORE, *February* 7, 1854.

“I certify that I was a boatman under the command of Sailing Master John A. Webster, of the Chesapeake flotilla, and that I was with him at the six-gun battery, on the Ferry branch near Fort Mc-Henry; and after the attack on the battery by the British barges on the nights of the 13th and 14th of September, 1814, the sailors belonging to the battery of Sailing Master Webster, as well as the soldiers stationed in the rear of the six-gun battery, and also the sailors belonging to Fort Covington, situated above the six-gun battery, were compelled to take from, and make use of, the garden stuff of every description located in an extensive garden directly alongside the six-gun battery, and then belonging to a Mr. De Condry.

“JOHN FRASER.

“Sworn to before

“A. H. PENNINGTON, *J. P.*

“FEBRUARY 7, 1854.”

No. 3.

“STATE OF MARYLAND, }
City of Baltimore, } *to wit:*

“Be it remembered, and it is certified hereby, that on this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and fifty-four, before me, the subscriber, one of the justices of the peace of the said State in and for the city aforesaid, personally appeared Mrs. Theresa Ross, who being by me first duly sworn according to law, deposeth and saith as follows, to wit: That she, the said deponent, was an inmate in the family of Mrs. Constance De Caidy during the attack by the British on the city of Baltimore, in the year 1814; that the said Mrs. De Caidy then resided on a piece of land cultivated by her as a market garden, and that said place was then well stocked and in the best state of cultivation; that the entire stock on said place was either destroyed or taken away by the troops stationed on and around it; that they also pulled down the fencing and used it as fuel, besides a large quantity of new fencing, prepared to fence in a place adjoining, and that whatever the soldiers did not use was, after the destruction of the fence, destroyed by cattle coming upon the place; that it is also to the deponent's knowledge that General Winder caused the said Mrs. De Caidy to move from said place, saying that it would have to be burned down in the event the British landed; and that a large portion of the furniture was either injured or lost; that a large quantity of rye straw, with the grain in it, was taken by the troops and used by them as beds; that in consequence of the aforementioned losses Mrs. De Caidy was, for a long time, unable to

prosecute her business, and that now she is very old, and in reduced circumstances, but bearing a most excellent reputation and highly respected by all who know her; and finally, that the said deponent believes that the amount of two thousand dollars, at which she values her losses which she met with, as hereinbefore stated, is rather much under than at all over the real amount sustained by her. In witness whereof, I have hereunto set my hand, on the day and year first above written.

her
“MARY J. X ROSS,
mark.

“Witnesses:

“ISAAC COOK.

“H. BATEMAN.”

“Subscribed and sworn before me, the subscriber, a justice of the peace in and for Baltimore city, this 28th day of January, A. D. 1854.

“ISAAC COOK.”

No. 4.

“STATE OF MARYLAND, }
“City of Baltimore, } to wit:

“Be it remembered, and it is hereby certified, that on this thirty-first day of January, in the year one thousand eight hundred and fifty-four, before me, the subscriber, one of the justices of the peace of the said State in and for the city aforesaid, personally appeared Dennis C. Lieuland, who being by me first duly sworn according to law, deposeth and saith as follows, to wit: That he is intimately acquainted with Mrs. Constance De Cainty, widow of the late Daniel De Cainty, now residing in said city of Baltimore; that he had been acquainted with her several years before the year eighteen hundred and fourteen, and well remembers her circumstances and situation at that time; that she was already at the time last above mentioned a widow, and had three small children, and owned and was residing on a piece of land bounding, in part, on the north shore of the Patapsco river, in the city of Baltimore, and lying between Fort Covington and Fort McHenry, immediately adjoining the water battery, known as the “Six-gun Battery;” that the said piece of land was, at that time, cultivated by her as a market garden; that it was well stocked with fruit and vegetables, and was then considered as the most extensive establishment of the kind in the State of Maryland; that for some time before and during the attack of the British on the city of Baltimore nearly all the fruit and vegetables in said garden were taken and used by the United States troops and militia stationed or encamped on and around said place; that they also broke down and took away the fencing

around and enclosing the same, and used it for fire wood ; and that in consequence of this, whatever was not used by the soldiers was destroyed by cattle coming on the place ; so that, as the deponent well remembers, having frequently visited the place at the time, it was entirely destroyed ; that a large quantity of posts and rails, intended to enclose an adjoining lot of some twelve or thirteen acres, which said posts and rails were the property of the said Constance De Caidy, although the lot aforesaid was not, together with a quantity of hay and straw on the place, were also used or destroyed as aforesaid ; that the dwelling house and out houses erected on said place were used, during the attack aforesaid, by the general in command and officers of the troops, and that the said Constance did remove from the same during the early part of the attack, as deponent was then informed and verily believes, by the order of the commanding officer, (as they stood between the position of the English fleet and the city battery, erected on an eminence on the northwest of said piece of land,) for the reason that should the English attempt to land they would have to be torn down to unmask the fire of said battery ; that said Constance never recovered from the losses she then experienced, and is now, at the advanced age of seventy years, without any means of support and in very reduced circumstances ; that she bears an excellent character, being much respected by all who know her ; and that, although the deponent cannot say positively what was the exact amount of her losses, he does not believe that the sum of two thousand dollars, at which she values them, would fully compensate her for the same under the circumstances.

“In witness whereof, I have hereunto set my hand, on the day and year first above written.

“EDWARD J. PETERS.”

No. 5.

STATE OF MARYLAND, }
City of Baltimore, } *to wit:*

Be it remembered, and it is hereby certified, that on this thirteenth day of January, in the year of our Lord one thousand eight hundred and fifty-four, before the subscriber, one of the justices of the peace of the said State in and for the city of Baltimore, personally appeared William J. Wright, a resident of the city aforesaid, who being by me first duly sworn according to law, deposes as follows, to wit: That the said deponent was personally acquainted with the situation of a piece of land adjoining the six-gun battery, on the Patapsco river, in the years 1813 and 1814, owned then by Mrs. Constance De Caidy ; and that the said place had been cultivated as a market farm and garden for several years previous to the last war with Great Britain ; and that during the war aforesaid the place was much injured by the sol-

diers pulling down the fencing and making a thoroughfare through the premises, to the great injury of Mrs. Constance De Caindy, but to what extent I cannot pretend to say.

WILLIAM J. WRIGHT.

Subscribed and sworn to before

A. H. PENNINGTON, *J. P.*

The proper certificates of authenticity are appended to each and every of the depositions. The committee therefore submit a bill authorizing the payment.

LIEUTENANT COLONEL MARTIN A. BAKER AND CAPTAIN
CHARLES S. WINDEN.

Washington: 1854.

Printed by G. W. Wood, at the Capitol.

Mr. BAKER, from the Committee on Military Affairs, makes the fol-
lowing

REPORT.

The Committee on Military Affairs, to whom was referred the petition of
Lieutenant Colonel Martin Baker, United States Army, reports:

That petitioner alleges that he was on board the San Francisco at
the time that vessel was wrecked; that he had in his possession at
the time \$100,000 worth of funds, which were lost then, and for which
he was and is still liable at the Treasury Department.

The committee, hearing from a member of the committee that Cap-
tain Charles S. Winden, United States Army, was on board at the same
time having, as he alleges, the same amount of retreating funds,
recommended the passage of a bill authorizing the proper accounting
of the Treasury to audit their accounts, respectively, for retreating
funds, and also the said Lieutenant Colonel Baker and Captain Winden
to be paid out of and out of the said sums, respectively, at the rate
of \$100,000.

THEORY OF THE

WILLIAM J. WOOD

THEORY OF THE

LIEUTENANT COLONEL MARTIN S. BURKE AND CAPTAIN
CHARLES S. WINDER.

[To accompany Bill H. R. No. 839.]

MARCH 3, 1859.—Ordered to be printed.

Mr. BONHAM, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Lieutenant Colonel Martin Burke, United States army, report :

That petitioner alleges that he was on board the San Francisco at the time that steamer was wrecked ; that he had in his possession at the time \$100, recruiting funds, which were lost then, and for which he was and is still liable at the Treasury Department.

The committee, hearing from a member of the committee that Captain Charles S. Winder, United States army, was on board at the same time, having, as he alleges, the same amount of recruiting funds, recommend the passage of a bill authorizing the proper accounting officer of the treasury to audit their accounts, respectively, on satisfactory proof that the said Lieutenant Colonel Burke and Captain Winder were in possession of and lost the said sums, respectively, at the time of the wreck.

LIEUTENANT COLONEL MARTIN S. BURKE AND CAPTAIN
CHARLES S. WINDER.

(To accompany H. R. No. 599.)

Wash. D. C.: Printed by the Government Printer.

Mr. Burdett, from the Committee on Military Affairs, made the fol-
lowing

REPORT.

The Committee on Military Affairs, to whom was referred the report of
Lieutenant Colonel Martin S. Burke and Captain Charles S. Winder,

That petitioners allege that he was on board the San Francisco at
the time that steamer was wrecked; that he had in his possession at
the time \$100,000,000,000, which was lost then, and for which
he was and is still liable at the Treasury Department.
The committee, hearing from a member of the committee that Cap-
tain Charles S. Winder, United States army, was on board at the same
time, having, as he alleges, the same amount of recruiting funds,
recommended the passage of a bill authorizing the proper accounting
of the treasury to audit their accounts, respectively, on certain
days, and that the said Lieutenant Colonel Burke and Captain Winder
were in possession of and lost the said sums, respectively, at the time
of the wreck.

DAVID G. BURNET.

[To accompany Bill H. R. No. 840.]

MARCH 3, 1859.—Ordered to be printed.

Mr. BENHAM, from the Committee on Military Affairs, made the following

R E P O R T .

The Committee on Military Affairs, to whom was referred the petition of David G. Burnet, report :

That it appears from the papers before the committee that in the fall and winter of 1849 Brevet Major James Longstreet, United States army, in command of the military post of Fort Lincoln, in Texas, caused to be cut from a ledge and labor of land, the headright of said Burnet, a quantity of valuable timber for building purposes at said fort. The petitioner asks as compensation for said timber fifteen hundred dollars, and five thousand dollars as compensation for consequent depreciation in the value of his land.

The committee recommend the passage of a bill directing the proper accounting officer to pay the petitioner the market value of his timber at the time it was cut, the sum not to exceed fifteen hundred dollars.

DAVID G. BURNETT

(Representing Ill. H. R. 219)

March 2, 1838—Ordered to be printed

Mr. Burnett, from the Committee on Military Affairs, made the following

REPORT

The Committee on Military Affairs, to whom was referred the petition of David G. Burnett, report:

That it appears from the papers before the committee that in the fall and winter of 1812 David Burnett, a private in the army, in command of the military post of Fort Adams, in Texas, caused to be cut from a large and labor of land, the head of a creek, a quantity of valuable timber for building purposes at said fort. The petitioner asks as compensation for said timber fifteen hundred dollars, and five thousand dollars as compensation for some great devastation in the value of his land. The committee recommend the passage of a bill directing the proper accounting officer to pay the petitioner the market value of his timber at the time it was cut, the sum not to exceed fifteen hundred dollars.

JOHN C. McFERRAN.

[To accompany J. R. No. 51.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CURTIS, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred a joint resolution for the relief of Captain J. C. McFerran, report:

That in November, 1850, Captain J. C. McFerran, then a lieutenant and assistant commissary of subsistence in the United States army, was ordered to relieve Lieutenant Francis J. Thomas, also an assistant commissary, at Santa Fé, in the Territory of New Mexico, as chief of the subsistence department for that military department, and Thomas, at the same time, was ordered to proceed to Washington City.

Among the very large amount of public property turned over to the relieving officer were a number of boxes of specie, (*silver*,) which were sealed and marked. These boxes, at the solicitation of Thomas, and to enable him to comply with his orders, McFerran, after counting some of the same kind, received at their marks, and for the above reasons, and believing them marked correctly, issued to Thomas his receipt for *twenty-eight thousand six hundred and forty-eight dollars and fifty cents*, and Lieutenant Thomas departed, leaving Lieutenant McFerran to count the money as he had time; which he did, and in the presence of witnesses, (see paper marked "E,") and found a deficiency of *twelve hundred and sixty-five dollars*. This was immediately reported to Lieutenant Thomas, under date of June 12, 1851, (see paper marked "A,") and to his agent in Santa Fé. Thomas refused or neglected to notice the report, but his agent, who was on the spot, acknowledged the deficit, but could not pay it for want of funds, (see paper marked "F.") Captain McFerran reported the matter to the proper department at headquarters, January 2, 1852, and accounted for this deficiency in his accounts for 3d quarter, 1851, dated September 30, 1851, and also attempted to recover the deficiency, by suit, from Thomas, but failed to do so, as the court decided that the government was the legal plaintiff, as legal owner of the money sued for, (see paper "D.")

In the mean time the government passed to the credit of Thomas

and charged McFerran this sum of *twelve hundred and sixty-five dollars*, which is therefore withheld from the pay of Captain McFerran, for whose relief the resolution is introduced.

It will be seen by this statement that Thomas had *twelve hundred and sixty-five dollars* of government money which McFerran is held accountable for. Both McFerran and Thomas, as the proof shows, were, at the time McFerran reported the deficiency to the proper department, January 2, 1852, officers of the United States army, with similar rank and service, and were both equally responsible, and within the power of the government. The evidence shows that the government had full notice of all the facts. The receipt was *prima facie* evidence that McFerran had this sum, but when he gave official notice of the error, before Thomas left the service, and now presents proof of it, shall he receive the relief which any court would grant? To persist in charging the receipt, after it was shown that it was procured by fraud, would seem to stand on the proof instead of the facts. The question should be, who had the money? Any receipt or promissory note procured by mistake or fraud would be rejected by any court, upon proof of fraud, if the papers remained in the hands of first parties. This is a controversy between first parties, the government and McFerran. It appears that after the government had full notice of this deficiency, and after charges of a very grave character had been preferred against Lieutenant Thomas, and pending the existence of a court martial convened for the investigation of these charges, Lieutenant Thomas was allowed to resign, he at the time being a large defaulter to the government, (see papers marked C, N, and O.) This was after full notice of the deficiency and fraud had been brought to the notice of the proper department of the government, and was not only no fault of McFerran, but was in violation of the spirit of a well established rule of service to inquire into the condition of an officer's accounts before accepting his resignation, and thereby prevent an escape from justice by resigning. The fact of Lieutenant McFerran giving a receipt without actually counting the money is made a ground of justification for suspending this amount from his pay.

It does not appear to the committee that an error of this character should be so regarded in the determination of legal rights. Misconduct may be punished by a court-martial, but not at the discretion of a department by withholding pay. Besides, Captain McFerran shows, by affidavits and certificates of superior officers and clerks of the Treasury, that it is not an uncommon occurrence to pass packages of money and take receipts according to the marks of such packages; that this is the habitual rule in banks, and that the necessities of service frequently compel this course to be pursued. It does not appear to the committee that such an error should be punished by such a forfeiture, especially when it is proved that no change in the "status" of parties had occurred when McFerran corrected the error. The question returns, which of the officers should be charged with this deficiency, he who obtained a receipt under false pretences, or the officer who gave a receipt under erroneous impressions? One commits a fraud, and the other is deceived. Shall the one who commits the fraud

receive a credit, and the one who is defrauded be charged with the deficit, after having done everything in his power, at his own expense, to bring the deceiver to justice and recover the money for the government?

It seems to your committee that, in view of these facts, and of the high standing of Captain McFerran, as shown by letters of high officials, (see papers marked "I,") that he should not be held responsible for money which he has shown he never received.

Your committee therefore recommend that the joint resolution do pass.

JAMES VAN PELT.

[To accompany Bill H. R. No. 906.]

MARCH 3, 1859.—Ordered to be printed.

Mr. ROBBINS, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial of James Van Pelt, praying to be placed on the invalid pension list for disabilities incurred in the service, and in the line of his duty, in the war of 1812, report:

That it appears by the testimony of several credible witnesses that James Van Pelt, the petitioner, was a corporal in a company of militia commanded by Captain Abner Woodworth, in Colonel Dobbin's regiment of New York State militia, who were called out for a three months' tour for the defence of the western frontier of New York, in the war with Great Britain, declared June 18, 1812; that the said Van Pelt marched with his company from their place of rendezvous (Geneva) the 12th of January, 1814, to Williamsville, or Eleven Mile creek, as it was then called, where they remained three months, when they were discharged; that he was taken sick while in this service, and, to avoid going to the hospital, he was provided for at a private house, where he could receive better care and attention. It further appears that his sickness was occasioned by having the mumps and taking cold in camping on the damp and frozen ground, which settled in his limbs and rendered him unfit for service, though he continued to be returned as present, having partially recovered. But afterwards his complaint returned upon him, and has grown worse and worse, until at the present time he is laboring under a total disability, originating from the causes aforesaid. At the time his application was made at the Pension Office to be placed on the invalid pension list, the physicians who examined him certified to two-thirds disability, and from the evidence produced, and from the personal examination they made, they were satisfied that he came to his disability from the causes alleged, while in the service of his country; and in this your committee fully concur; and one of your committee having made personal examination also of the petitioner, who submitted himself to a professional examination during this Congress, reports a total disability. The reason why this claim was not admitted at the

Pension Office was, that the returns from the Third Auditor's office showed the term of his service to have been three months, as "present" all the while.

The captain, lieutenant, ensign, and a corporal of the company to which he belonged all testify in regard to his sickness, and the cause, and the duration. The captain, in particular, testifies that in the latter part of the month of February, 1814, said Van Pelt was reported sick, and that immediately thereafter he visited him at the house of Mrs. Wilkinson, and found him very ill with a disease called the mumps, and that he continued ill and was confined to his bed for about three weeks, and was not able to resume the performance of his military duties during his term of service. All the testimony agrees on this point.

In view of all the testimony and circumstances of this case your committee have come to the conclusion to report a bill.

JAMES LACY.

[To accompany Bill H. R. No. 907.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial of James Lacy, of Tennessee, report:

That they have had the same under examination and find that said Lacy was a private in Captain Winode's company of Tennessee militia from the 5th of January, 1814, to the 18th of May, 1814. It is in evidence that, owing to the severe and extraordinary exposure of the service to which he was subjected, he was afflicted with white swelling, inflammation, &c., to such an extent as that he has become wholly disabled. The proof is clear, and of so satisfactory a character as that your committee feel justified in reporting a bill for his relief. They recommend the passage of the same.

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE HOUSE OF REPRESENTATIVES, JANUARY 18, 1837.

WASHINGTON: GALE & SECOR, PRINTERS, 1837.

Mr. Oakes, from the Committee on the Land Office, makes the following

REPORT.

The Commission on the Land Office, to whom was referred the memorial of James Lacy, of Tennessee, respectfully

submit the following report.

That they have had the same under examination and find that

said Lacy was a private in Captain Smith's company of Tennessee militia from the 1st of January, 1814, to the 1st of May, 1814.

It is in evidence that, owing to the nature and extraordinary exposure of the service to which he was assigned, he was afflicted with a severe swelling, inflammation, &c., so much so that he has become wholly disabled. The medical board, and other witnesses, a committee as that your committee feel justified in reporting a bill for his relief.

They recommend the passage of the same.

ADELAIDE ADAMS, WIDOW OF COMMANDER GEORGE ADAMS.

[To accompany Bill H. R. No. 908.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the memorial of Mrs. Adelaide Adams, report:

That they have examined the same, and find, from the memorial and accompanying papers, that she is the widow of Captain George Adams, of the United States navy, who entered the navy in the year 1818, and died on the 19th April, 1856, at Baltimore, Maryland, of a disease contracted in the service. It appears that the only objection to the allowance of her claim at the Pension Office was owing to the construction of the phrase "line of duty." From the evidence submitted there can be no doubt but that the disease of which Captain Adams died was contracted whilst he was in the line of his duty. Dr. James C. Palmer, a surgeon in the United States navy, certifies "that the late Commander George Adams, before being detached from the receiving ship Ontario, at Baltimore, called my attention to the fact that he had a cough. He was soon after relieved from command of the Ontario, and passed out of my professional observation; but I learned, after the lapse of many months, that he had a constant cough, with other symptoms of pulmonary consumption. When next I had opportunity to observe he was in an advanced stage of the said disease, of which he *certainly died*. I do not believe, from what I heard of his history, that he had a continuous cough after leaving the Ontario; and it is my opinion that the disease of which he died probably originated with that cough, in which case, it seems to me a reasonable conclusion that he died in consequence of exposure incurred during a period when he was engaged in continuous acts of duty."

Dr. G. W. Miltenberger, of Baltimore, who attended Commander Adams after he was detached from the Ontario, certifies, under oath, that the disease of which he died "commenced its ravages while he had charge of the Ontario."

Lieutenant Henry Rolando, who served with Commander Adams

on the Ontario in the year 1851, states that he remembers distinctly the sufferings of Commander Adams from "an inflammatory disease, accompanied with cough, which I have no doubt was the development of the disease of which he subsequently died."

The committee further report, that Mrs. Adams has five infant children depending upon her personal exertions for support. That she is in very indigent circumstances. The committee are unanimous in the opinion that it is a case where a pension should be granted; they therefore report a bill.

JAMES FLOYD.

[To accompany Bill H. R. No. 909.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition and accompanying papers of James Floyd, report :

That the petitioner states, under oath, that he is now sixty-five years of age ; that he entered the service as a private during the war of 1812, in the company of Captain Stokes, in the regiment of Lieutenant Colonel Turpin. He enlisted for five years ; and that while in the line of his duty he was thrown from a horse and badly injured, so much so that he was disabled from further service. Elijah Barnard and Benjamin Lainsing, who are certified to be credible men, state, under oath, that they were in the same company with the petitioner, and were present at the time he was thrown from his horse and injured. They know him to be the man so injured, and have known him ever since the day of the injury. H. E. Rounsville and John Hinds, who are certified to be credible men and reputable in their profession as physicians, certify to the fact that the petitioner is now totally disabled by reason of said wound. The Third Auditor of the Treasury, who has the custody of the rolls of the soldiers of the war of 1812, certifies that James Floyd was a private in the company of Captain Beverly Turpin, of the second regiment of light dragoons ; that he enlisted on the 1st day of September, 1812, for five years, and was discharged on the 14th day of October, 1814 ; and that there is no reason assigned on the rolls for his premature discharge. Your committee believe, from the evidence, as well as from his premature discharge, that he was so disabled as not to be fit for further service by reason of being thrown from his horse as aforesaid. They therefore report a bill for his relief.

REPORT OF THE
COMMISSIONER OF THE
LAND OFFICE
FOR THE YEAR 1881

ALBANY, N. Y.:
J. B. LEECH, PRINTER.
1882.

THE COMMISSIONER OF THE
LAND OFFICE,
ALBANY, N. Y.

REPORT OF THE
COMMISSIONER OF THE
LAND OFFICE
FOR THE YEAR 1881

The following report of the Commissioner of the Land Office for the year 1881, is respectfully submitted to the Senate and Assembly, and to the people of the State.

The year 1881 has been a year of unusual activity in the Land Office. The number of applications for land has been large, and the number of lands sold has been large. The total amount of land sold during the year was 1,234,567 acres, valued at \$1,234,567. The total amount of land sold during the year was 1,234,567 acres, valued at \$1,234,567.

The following is a summary of the land sold during the year 1881:

County	Acres	Value
Albany	100,000	\$100,000
Columbia	200,000	\$200,000
Delaware	300,000	\$300,000
Dutchess	400,000	\$400,000
Essex	500,000	\$500,000
Hamilton	600,000	\$600,000
Montgomery	700,000	\$700,000
Saratoga	800,000	\$800,000
Schoharie	900,000	\$900,000
Schenectady	1,000,000	\$1,000,000
Warren	1,100,000	\$1,100,000
Westchester	1,200,000	\$1,200,000
Yates	1,300,000	\$1,300,000

LIEUTENANT ROBERT CUNNINGHAM.

[To accompany Bill H. R. No. 910.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and accompanying papers in the case of Robert Cunningham, report :

That they have examined the same and are of opinion that the report made at the 3d session of the 34th Congress should be adopted. They report a bill and recommend its passage.

HOUSE OF REPRESENTATIVES, *February* 12, 1857.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Lieutenant Robert Cunningham, of Pennsylvania, having had the same under consideration, beg leave to report:

That it appears, from the testimony before the committee, that the petitioner entered the service of the United States as first lieutenant in Captain Daniel McKowen's company of Pennsylvania militia, at Greensburgh, Pennsylvania, on the 21st day of April, 1813, and served until the 8th day of November the same year, and was honorably discharged. It appears, from the certificate of Doctors Walker and Lutz, that Robert Cunningham was a lieutenant in Captain Daniel McKowen's company, in the regiment commanded by Colonel Reese Hill, Pennsylvania militia, and while in the service of the United States was rendered incapable of performing military duty as a soldier, by reason of wounds and injuries received as aforesaid, and in the line of duty. And from an accurate examination it appears that on or about the 1st of June, 1813, at a place called Erie, in the State of Pennsylvania, the said Cunningham was attacked with measles; and from retrocession bronchial disease was developed, which confined him to his bed about three weeks, and laid the foundation of asthmatic affection, which has continued up to the present time, and increases in severity with his age, and from the slightest exposure or cold the paroxysms recur; and, finally, are of the opinion the said Cunningham is totally unable to obtain his subsistence by manual labor. The petitioner is further sustained by the affidavits of Doctors Hassin and

Robinson, who have frequently been called to attend the said Cunningham for combination of diseases, such as pains in the limbs, asthma, bronchial, as well as sciatic affection of the right hip-joint, contracted, in their opinion, from exposure and sickness while in the service of the United States, and in the line of his duty, and consider the said Cunningham totally unable to gain his subsistence by manual labor. The statement of the petitioner is further corroborated by the affidavits of twelve persons, duly authenticated, who are well acquainted with the petitioner from the time he entered the army up to the present, and entirely concur in the statement of the petitioner as to his present disability, and have no doubt it has resulted from sickness and exposure while in the army of the United States, and in the line of his duty. Your committee, after a full examination of the case, are of the opinion that the petitioner is entitled to relief, and report a bill accordingly and recommend its passage.

JOHN HOUSER.

[To accompany Bill H. R. No. 911.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition and papers of John Houser, report :

That the facts set forth in the report of the Committee on Invalid Pensions at the first session of the thirty-fourth Congress are correct. They adopt that report, and report a bill.

The petitioner, John Houser, asks to be placed upon the pension roll. He states in his petition, and shows by the accompanying certificate, that he is now seventy-two years of age ; that he enlisted as a teamster on the first day of March, 1813, for one year, under the direction of Morgan Lewis ; that he was engaged in conveying stores, provisions, &c., from Albany to Greenbush ; that while so employed, on the 12th day of February, 1814, in unloading a load of pork in barrels from a wagon, a barrel fell, striking him on the left side of the abdomen, causing a large and dangerous rupture, the chine striking the left leg some eight inches above the ankle, severely bruising and fracturing the bone, from which followed a chronic inflammation and an ulcer in the site of the fracture, which, with the rupture, does and has for the last twenty-five years rendered him unable to perform manual labor of any kind. He received an honorable discharge on March 1, 1814. Said papers were all burnt in 1834, when his house was burnt. That he had the papers clearly appears from the testimony of S. T. Vanderzee, under whom he enlisted ; that, being in easy circumstances, he kept the papers in his possession without applying for a pension, until they were burnt, with his house, in 1834. He asks for a pension under the act of April 24, 1816, granting pensions to disabled persons in the military service of the United States. Your committee respectfully report the accompanying bill for his relief.

MICAJAH HAWKS.

[To accompany Bill H. R. No. 912.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Micajah Hawks, praying for an invalid pension, having had the same under consideration, now report :

Your committee deem it proper to state that their action in his case is to be regarded as an exception rather than as in conformity to the general rule that has governed your committee.

It appears, from proper proof, that he was an assistant surgeon in the naval service of the United States in the war of 1812, and was acting in that capacity on board the *Hornet* at the time of the celebrated engagement of that ship with the British sloop-of-war *Peacock*. He was honorably discharged May 10, 1813.

It is equally clear that he is now totally disabled; and, at the age of seventy-four years, is destitute as well as helpless. Three physicians and surgeons of high standing in his vicinity give it as their decided opinion that his disability, which has been of long standing, is entirely in consequence of the accident which, as he alleges, befel him while in the line of his duty on board the *Hornet*.

The chief point of difficulty in his case is with regard to the proof of the original injury.

His own statement is, that soon after the *Hornet* arrived in New York he was called on to visit a sick man at one or two o'clock in the morning, the vessel at that time being under repair, and everything about her being in confusion and disorder; in passing to the patient he fell into the hold of the vessel, and that the result was an injury of the small of the back, less serious at first, but which has constantly increased until he has long been unable to move without help.

As to this original injury, Mr. Hawks furnishes no statement but his own. Nor can he do so. He continued to serve as assistant surgeon until honorably discharged, and the rolls furnish no proof of his disability. It further appears (see letter of T. J. D. Fuller, esq.,) that

there is but one other survivor of this cruise of the Hornet, viz: Commodore Forest, now absent in command of the Brazilian squadron. His testimony cannot, therefore, be obtained at present; nor is it certain that it would avail the applicant anything if procured.

The narrative of the applicant is consistent with itself, and with the opinions of the medical gentlemen on file. He produces the certificates of the best men of his vicinity in favor of his application, and his integrity and honorable standing are heartily endorsed by Hon. S. C. Foster, of this House, and by Hon. T. J. D. Fuller, whose letter has already been referred to, and to the contents of which the attention of the House is invited.

These facts lead your committee to believe that the applicant has given a truthful statement of his injury and of its effects, and that he is consequently entitled to the relief proposed by the bill herewith reported.

MAJOR JOHN F. HUNTER.

[To accompany Bill H. R. No. 913.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of John F. Hunter, report:

That the said John F. Hunter was a major in the 11th infantry during the war with Mexico; that on the night of the 19th of August, 1847, just previous to the battle of Contreras, he, together with the troops belonging to his regiment, was compelled to lie out in a storm of rain, the severity of which was unparalleled. On account of said exposure he was seized with rheumatic pains, &c., which continued to such an extent as that the tendons and leaders of his arms and hands became so contracted as that he has been unable to use his hands since for the purpose of earning a living. Mitchell Steever, who was the lieutenant and regimental quartermaster in the 11th infantry, testifies, under oath, to the statements set forth by the petitioner. He has a distinct knowledge of the exposure to which Major Hunter was subjected, and also to his sufferings on account of them. Colonel John H. Savage, a member of this committee and of the House, remembers very clearly the unprecedented rigors of the storm to which Major Hunter alludes. Stephen F. Weakly and L. J. W. Foulk, who are certified to be credible men, testify, under oath, to the fact that Major Hunter was a sound and healthy man in every respect when he entered the service; that when he returned from Mexico he was afflicted with rheumatism to such an extent as that his fingers were drawn into the palms of his hands, and that they continue so to this time. The Hon. J. F. Dowdell, of this House, states that Major Hunter is now disabled in the manner heretofore set forth. Your committee are unanimous in the opinion that it is a case justifying relief; they therefore report a bill.

MAJOR JOHN F. HUNTER

REPORT

The Committee on Pensions, to whom was referred the petition
of John F. Hunter, report

That the said John F. Hunter was a member of the 11th Infantry
during the war with Mexico; that on the night of the 19th of
August, 1847, just previous to the battle of Contreras, together
with the troops belonging to his regiment, was transported to the
front of said battle, the severity of which was unparalleled. On
account of said exposure he was seized with rheumatic pains,
which continued so much as to render him unable to perform his
duty, and hands being so disordered as that he has been unable
to use his hands since for the purpose of writing a letter. Although
disabled, who was the lieutenant and regimental quartermaster in the
11th Infantry, residing, under oath, to the statements set forth by the
petitioner. He has a distinct knowledge of the exposure to which
Major Hunter was subjected, and also to the military service and of
him. Colonel John H. Bange, a member of the committee and of
the House, remembers very clearly the unprecedented rigors of the
campaign in which Major Hunter suffered. Stephen F. Waddy and J. A.
W. Smith, who are entitled to be credible men, testify, under oath, to
the fact that Major Hunter was a sound and healthy man in every
respect when he entered the service; that when he returned from
Mexico he was afflicted with rheumatism to such an extent as that
his fingers were drawn into the palm of his hands, and that they
continued to this time. The Hon. J. P. Howell, of this House,
states that Major Hunter is now disabled in the manner mentioned
set forth. Your committee are unanimous in the opinion that it is a
case justifying relief; they therefore report a bill.

SUTTON M. YOUNG.

[To accompany bill H. R. 914.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Sutton M. Young, report:

That the petitioner was a private in the company of Captain Elmore, 18th infantry, also in Captains Sangsters, McIntosh, and Melvin's company; he enlisted on the 29th September, 1814, for five years, and was discharged on the 29th of February, 1819, by reason of expiration of service. James Young and Jeremiah Gibbs, who are certified to be credible men, testify, under oath, that they were in service with the petitioner and know the fact that he was in the year 1817, near the town of Pensacola, in Florida, attacked with chronic rheumatism, occasioned by wading through the swamps and marshes; that said rheumatism has produced atrophy of the thigh, which renders him incapable of earning a living; they have known him since the time of his discharge, and know that he is permanently disabled.

Joseph S. Simmons and Benjamin F. Harvie, who are certified to be reputable and credible physicians certify, under oath, that they have examined the petitioner and find that he is now totally disabled by reason of the disability aforesaid. The committee believe from the evidence that he is entitled to relief, and therefore report a bill.

SETTON M. YOUNG

(To accompany H. R. 311)

March 2, 1887.—Ordered to be printed.

Mr. Clark, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Setton M. Young, report:

That the petitioner was private in the company of Captain Hinman, 18th Infantry, also in Captain Baggett's, 10th Cavalry, and Hinman's company; he enlisted on the 22d September, 1864, for five years, and was discharged on the 29th of February, 1869, on account of expiration of service. James Young and Jeremiah Gibbs, who are credited to be credible men, testify under oath that they were in service with the petitioner and know the fact that he was in the year 1867, near the town of Wisconsin, in Florida, attacked with chronic rheumatism, occasioned by working through the swamps and sinners; that said rheumatism has produced atrophy of the thigh, which renders him incapable of earning a living; they have known him since the time of his discharge, and know that he is permanently disabled.

Joseph R. Simmons and Benjamin F. Harvey, who are entitled to be reputable and credible physicians testify, under oath, that they have examined the petitioner and that he is now totally disabled by reason of the disability aforesaid. The committee believe from the evidence that he is entitled to relief, and therefore report a bill.

ALEXANDER GADDES.

[To accompany Bill H. R. No. 915.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition and accompanying papers of Alexander Gaddes, report:

That they find that the said Alexander Gaddes was a private in the company of Captain Charles Crawford, Georgia volunteers, during the war of 1812. That he served a term of eighteen months in that company, when his term of enlistment expired. He then enlisted for the war, and during the last enlistment he was thrown from the platform of a battery whilst engaged in firing a salute to General Pinckney, and broke the tendon of his heel. Two of his comrades, James Lunsford and Lewis Barton, who were present at the time and know the circumstances of the injury and the extent of his disability at this time, testify under oath to the facts set forth in the petition. The witnesses are certified to be credible. Joseph Underwood and T. G. Underwood, who are certified to be credible men and reputable in their profession as physicians, certify to the character of the disability, &c. Your committee think the evidence justifies them in reporting a bill granting relief at the rate of four dollars per month.

ALEXANDER GADSDEN

(The committee on Invalids)

March 2, 1872 - Ordered to be printed

See also from the Committee on Invalids, March 2, 1872, the following

REPORT

The Committee on Invalids, to whom were referred the petition and accompanying papers of Alexander Gadsden, report:

That they find that the said Alexander Gadsden was a private in the company of Captain Charles Howard, Georgia Volunteers, during the war of 1812. That he served a term of eighteen months in that company, when he lost his right arm. He then enlisted for the war, and during the last campaign he was taken from the field by a battery which engaged in a battle at Fort Mifflin, and he was taken to the hospital of his regiment. Two of his comrades, James Hamilton and Lewis Barton, who were present at the time and know the circumstances of the injury and the extent of his disability at this time, testify under oath to the facts set forth in the petition. The witnesses are entitled to be credited. Joseph Underwood and T. G. Underwood, who are entitled to be credited, and testify to the facts set forth in the petition, testify to the character of the disability. Your committee think the evidence justifies them in reporting a bill granting relief at the rate of four dollars per month.

WILLIAM BROWN.

[To accompany Bill H. R. No. 916.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CASE, from the Committee on Invalid Pensions, made the following

R E P O R T .

The Committee on Invalid Pensions, to whom was referred the petition of William Brown, report :

That, upon an examination of the same, they have come to the same conclusion the Committee on Pensions did at the second session of the thirty-third Congress. They adopt their report :

That the said petitioner was a private in the company commanded by Captain Joseph Hall, in the 4th regiment East Tennessee militia, commanded by Colonel Bayless, in the war of 1812 ; that during the winter of 1814-'15 he served in said company in the States of Tennessee and Alabama ; that he endured great fatigue and exposure, in consequence of which he became disabled with rheumatism, from which he has not at any time since been free, and by which he is now hree-fourths disabled. The committee report a bill for his relief.

THE UNIVERSITY OF CHICAGO
[illegible]

REPORT
[illegible]

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CHARLES E. ROBERTS.

MARCH 3, 1859.—Ordered to be printed.

Mr. HILL, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom was referred the memorial of the legislative assembly of the Territory of Washington in behalf of Charles E. Roberts, a settler on the public lands in Whatcom county in said Territory, report:

That the said Charles E. Roberts is entitled to relief, and they recommend the passage of a bill giving to said Roberts the right of entry for 320 acres of any lands subject to entry in said Territory, without charge therefor; and that a patent for such land, when applied for by said Roberts, his heirs or assigns, shall issue.

CAPE GIRARDEAU AND SPRINGFIELD RAILROAD COMPANY.

MARCH 3, 1859.—Ordered to be printed.

Mr. HILL, from the Committee on Public Lands, made the following

R E P O R T .

The Committee on Public Lands, to whom was referred the petition of citizens of Texas and of Wright county, Missouri, for a grant of three millions of acres of public lands, to aid in the construction of a railroad to run from Cape Girardeau and terminating at Springfield, on the southwestern border of the State of Missouri, have considered of the said application, and report as follows :

That conceding the immense resources of the country through which the proposed road would pass, and the great benefits to be derived by the petitioners from the construction of the contemplated work, the committee are not satisfied of any great advantages to be derived by the government by making said grant. It is certainly more than the government of the United States, great as are its resources, can afford to do, to give liberally of its public lands for the construction of every railway that would seem to enrich or otherwise benefit the deserving people of every remote district of country. Time and individual enterprise will do much to cure the evils and inconveniencies under which all new communities and many old ones labor. As a general principle, it cannot be doubted that in making grants of public lands there should be some assurance that the government will not suffer loss, or will in some manner be greatly benefited by facilities for transportation of troops, munitions of war, supplies and army stores. The petitioners do not pretend that government is to receive any equivalent for its bounty.

The committee having already considered of other petitions of similar character and connected with the same enterprise, refusing to recommend the grants of land prayed for, are constrained to give this petition the same direction, and to withhold their approval of its objects.

REPORT
OF THE
COMMISSIONER OF THE GENERAL LAND OFFICE
IN RESPONSE TO A RESOLUTION OF THE SENATE
PASSED MAY 10, 1861

ALBANY:
J. B. LEECH, PRINTER.
1862.

REPORT.

The Commission on the subject of the public lands, in its report, has the honor to acknowledge the receipt of the report of the Committee on the subject of the public lands, and to state that the same has been carefully considered by the Commission.

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JAMES MACCABOY.

[To accompany Bill S. 283.]

MARCH 3, 1859.—Ordered to be printed.

Mr. SAMUEL S. MARSHALL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill 283 "for the relief of James Maccaboy," have had the same under consideration, and beg leave to report :

That the claimant, while in the employ of the United States as a fireman on board a steam dredge at the Washington navy yard, met with a casualty which resulted in the necessary amputation of one of his legs. The only question for the consideration of your committee was the propriety or policy of establishing a civil pension list, for the relief of those who might be injured while in the *civil* employment of the government. They have uniformly reported against all such applications, upon the principle that, if relief was proper at all, it should be by a general bill providing for the different grades of "disability," as in the invalid pension law, now in force. Your committee can perceive no good reason for making the case under consideration an exception to the rule, and they therefore report back the bill, with a recommendation that the bill do not pass.

JAMES M. MAGUIRE

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[Illegible text]

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REPORT

[Illegible text]

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MOSES MEEKER.

[To accompany Bill H. R. No. 919.]

MARCH 31, 1859. —Ordered to be printed.

Mr. DAVIDSON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Moses Meeker, asking for a return of rent-lead erroneously exacted from him for mining and smelting in the Upper Mississippi lead mines, report :

That Moses Meeker, the petitioner, previous to the year 1823, made an arrangement with the Winnebago, Ottawa, Pottawatomie, and Chippewa Indians, and obtained from them permission to work certain lead mines on the lands occupied by them on the Upper Mississippi, within the Territories of the United States, and to which their title had not been extinguished.

Some time after this arrangement was made, it seems that the agent of the United States saw fit to contest the right of Mr. Meeker to carry on the business of mining and smelting, and insisted upon his paying rent to the United States for the use of the mines, and taking from them a lease or license to that effect. When this interference with the operations of Mr. Meeker first took place appears to have been in the year 1825, as rent was paid during that year by him to the United States, as appears from the receipts of said Meeker and the books of the United States lead agency, now on file in the General Land Office, in Washington, several copies of leases and permits, signed by Lieutenant M. Thomas, superintendent of United States lead mines, the earliest dated in May, 1825, giving Mr. Meeker permission to mine and purchase and smelt lead, stipulating to pay a certain rent therefor, have been exhibited to the committee.

The Indian title to the land on which the mines were situated was not extinguished until 1829 and 1832, when the treaties of Rock Island and Prairie du Chien were respectively made (see 7 vol. Stat. at Large, pp. 320 and 370) with different tribes occupying them. From the time the agents of the United States first claimed rent for the working of these mines, it appears from a statement furnished by the Commissioner of the General Land Office, with his letter dated January, 1859, that Mr. Meeker had delivered to the United States, up to 1830, the time when the Prairie du Chien treaty went into effect, 125,000 pounds of lead.

Your committee are of the opinion that the rent so exacted from the

petitioner was wrongfully exacted, and that it is the duty of the government to refund the amount so unjustly taken from him. This view has been twice taken by Congress: first, in the year 1848, when Congress passed an act for the relief of J. P. B. Gratiot and Henry Gratiot; and second, at the present session, in the case of Joseph Hardy and Alton Long. Both of the above cases are precisely parallel with the case under consideration; the Gratiots and Hardy and Long mined and smelted in the same neighborhood with Meeker, and their rights rest upon the same foundation.

Your committee therefore do not hesitate to recommend the passage of the bill herewith reported, providing for the liquidation and payment to the petitioner of the value of the lead so received by the United States.

GENERAL LAND OFFICE,
January 13, 1859.

SIR: In reply to your letter of the 11th instant, I have the honor to state, that it appears from the quarterly and consolidated returns that Moses Meeker paid the following amounts of lead rent for the periods named, viz:

In the 4th quarter of 1825 and the 1st and 2d quarters of 1826.....	14,417 pounds.
In July and August, 1826.....	10,901 pounds.
In 3d and 4th quarters of 1826 and 1st quarter of 1827.....	33,580 pounds.
In 2d quarter of 1827.....	16,252 pounds.
In 3d quarter of 1827.....	26,098 pounds.
In 4th quarter of 1827.....	9,908 pounds.
In 2d quarter of 1828.....	14,838 pounds.
Total number of pounds.....	125,994

I am, with great respect, your obedient servant,

THOMAS A. HENDRICKS,
Commissioner.

Hon. C. C. WASHBURN,
House of Representatives.

HEIRS OF JONATHAN SKINNER.

[To accompany Bill H. R. No. 920.]

MARCH 3, 1859.—Ordered to be printed.

Mr. VANCE, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the memorial of Serepta Cleveland, praying for remuneration for a house belonging to her father, Jonathan Skinner, destroyed by the enemy during the war of the revolution, report:

That they have had the same under consideration, and that it appears from the certificates of various persons which accompany the memorial, that a dwelling house, with out buildings attached, which belonged to the said Jonathan Skinner, of the county of Essex, in the State of New Jersey, in the village of Springfield, was taken possession of by the American troops in the war of the revolution, and was used by our army as a hospital for the sick and wounded, the said Skinner and his family being ejected therefrom. That whilst it was so in the possession of our troops, it was seized by the British on their retreat from the battle of Springfield and burnt to the ground, together with its contents and the out buildings attached. These facts, sufficiently attested as they are by the affidavits of eye witnesses, in our opinion constitute sufficient grounds for relief. There was also before your committee a schedule of the property so destroyed with an estimate of its value, made in pursuance of a law of New Jersey by William Wilcocks, Mathias Peirson, and Henry Garritson, sworn commissioners appointed for that purpose, which makes the aggregate amount to £482 1s. 4d. New Jersey currency of that period, after striking out such of the items in said schedule as it seemed to your committee did not come properly under the rule adopted by this House. Your committee, therefore, report a bill for their relief.

REPORT
OF THE
COMMISSIONER OF THE
LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
MAY 1, 1892

ALBANY:
J. B. LEECH, PRINTER.
1892.

THE COMMISSIONER OF THE LAND OFFICE has the honor to acknowledge the receipt of a copy of the report of the committee on the subject of the land office, and to state that the same has been forwarded to the proper authorities for their consideration.

That they have had the same under consideration, and that it is now being considered by the proper authorities. The report of the committee is a valuable one, and it is hoped that it will be of great service to the State. The report is a comprehensive one, and it covers all the subjects which were referred to it. It is a report which is well worth the attention of the public. The report is a valuable one, and it is hoped that it will be of great service to the State. The report is a comprehensive one, and it covers all the subjects which were referred to it. It is a report which is well worth the attention of the public.

CHILDREN OF HENRY BROCKHOLST LIVINGSTON.

[To accompany Bil. H. R. No. 221.]

MARCH 3, 1859.—Ordered to be printed.

Mr. GEORGE TAYLOR, from the Committee on Revolutionary Claims,
made the following

REPORT.

The Committee of the House of Representatives on Revolutionary Claims, to whom was referred the memorial of Anson Livingston and other heirs of the late Henry Brockholst Livingston, lieutenant colonel of the continental army of the revolution, praying for the payment of four years arrears of pay as lieutenant colonel and secretary up to March 23, 1783; also, for half pay as lieutenant colonel from the time of the peace, March 23, 1783, to the 18th of March, 1823, the time of his death, with annual interest thereon to the present time; together with four hundred and fifty acres of land, claiming the same under the several acts of Congress herein set forth in this report, which the said memorialists contend constituted a legal contract on the part of the United States, would respectfully submit herewith their report in answer to said memorial:

That the following evidence of said claim appears proven to the entire satisfaction of your committee:

1st. That the said Henry Brockholst Livingston, in the month of May, in the year 1776, engaged as a volunteer in the third New Jersey regiment, then on its march to Canada; that in the year following he was honored with a lieutenant colonel's commission, in which capacity he served until the year 1779, when he obtained leave of absence for twelve months to attend Mr. Jay to Europe, which term was extended by a subsequent resolution until further order of Congress; that he continued with Mr. Jay in the character of private secretary, without receiving any compensation, until the month of February, 1782, at which time he left Spain, and was captured on his passage to America by a British frigate.

On his return home he had the mortification to find his position as an officer deranged by the resolve of 31st December, 1781, which passed in his absence, and which is in the following words:

RESOLUTION—IN CONGRESS, DECEMBER 31, 1781.

“*Resolved*, That all officers of the line of the army below the rank of brigadier general, who do not belong to the line of any particular State or separate corps of the army, and are entitled by acts of Con-

gress to pay and subsistence, shall have the same, with the depreciation of their pay, made good to the first day of January, 1782.

“*Resolved*, That the Secretary of War be, and he is hereby, directed to make returns to Congress, on or before the 20th day of January, 1782, of the names and rank of all the officers necessary to be retained in service, that are included in the preceding resolution.

“*Resolved*, That all officers included in the foregoing description, and whose names shall not be inserted in the returns directed to be made by the preceding resolution, shall be considered as retiring from service on the first day of January, 1782: *Provided, always*, That nothing contained in these resolutions shall be construed so as to prevent or hinder any officer that shall retire as aforesaid from enjoying all the emoluments that he may upon retiring be entitled to by any former acts of Congress.”

By reason of which the following certificate was issued by the Secretary of War.

“WAR OFFICE, *February* 23, 1782.

“Lieutenant Colonel Henry Brockholst Livingston retired from service on the first day of January, 1782, under the resolve of Congress of the 31st December, 1781, and was not attached to the line of any particular State.

“B. LINCOLN.”

2d. We also find that the *bounty land* act of September 16, 1776, includes and entitles lieutenant colonels to 450 acres of land, which is in the following words:

BOUNTY LAND ACTS IN BEHALF OF OFFICERS AND SOLDIERS OF THE
REVOLUTION, WHO ENGAGED FOR THE WAR.

To provide for the raising of eighty-eight battalions to serve for the war.

“*Resolved*, That, in addition to a money bounty of twenty dollars to each non-commissioned officer and private soldier, Congress make provision for granting lands, in the following proportions, to the officers and soldiers who shall engage in the service, and continue therein to the close of the war, or until discharged by Congress, and to the representatives of such officers and soldiers as shall be slain by the enemy. Such lands to be provided by the United States, and whatever expense shall be necessary to procure such land the said expense shall be paid and borne by the States, in the same proportion as the other expenses of the war: to a colonel, five hundred acres; to a lieutenant colonel, four hundred and fifty acres; to a major, four hundred acres; to a captain, three hundred acres; to a lieutenant, two hundred acres; to an ensign, one hundred and fifty acres; each non-commissioned officer and soldier, one hundred acres.”—(*Resolution, in Congress, September 16, 1776.*)

On the 3d of October, 1780, Congress reorganized the army, and extended the grants of land to those officers who became *supernumeraries*.

Grants of land was the *first* inducement embraced in the engagement to *serve during the war*.

This was declared by the act of September 16, 1776, to be, "*in addition*" to the promise of their monthly pay and bounty money.

The petitioner claims for service rendered under a contract, which embraces considerations named in the following acts :

1st. Grants of land by the resolves of September 16 and 18, 1776.

2d. Seven years' half-pay by the resolve of May 15, 1778.

3d. Seven years' half-pay in *specie* or current money, October 3, 1780.

All to induce the officers and soldiers to serve during the war, and the promise of seven years' half-pay made to the supernumerary officers :

These considerations were all blended in the contract under the following resolve :

"1780, October 21.—*Resolved*, That the commander-in-chief and commanding officer in the southern department direct the officers of each State to meet and agree upon the officers for the regiments to be raised by their respective States, from those who incline to continue in service ; and where it cannot be done by agreement, to be determined by seniority, and make return of those who are to remain ; which is to be transmitted to Congress, together with the names of the *officers reduced*, who are to be allowed *half-pay for life*.

"That the officers who shall continue in the service to the end of the war shall also be entitled to *half-pay during life*, to commence from the time of their reduction."

That after the close of the war he applied to the paymaster general, Pierce, for the settlement of his half-pay, and his services as private secretary to Mr. Jay, and received the following answer :

"WEST POINT, January 17, 1784.

"SIR: I do myself the honor to enclose your certificate from the Secretary of War, and am obliged to suspend the *admission* of your *claim* for commutation.

"The resolve granting the half-pay you will find extends to those officers only who continued in service to the end of the war, and in all the partial derangements except of December 31, 1781, there has been a particular provision which has given it. In this last mentioned instance there is an obscure *negation clause*, which, as it grants nothing but what was before given, I cannot construe to extend beyond, or place you in a better situation than what the former resolution entitled you. I am sensible of the *inequality* of these *resolutions*, but must be bound by them until I have further directions.

"I am, sir, your most obedient,

"JNO. PIERCE.

"Col. HENRY B. LIVINGSTON."

He then applied to the Secretary of Finance and received the following answer :

"OFFICE OF FINANCE, February 17, 1784.

"SIR: I am to acknowledge the receipt of your favor of the first instant. I should be very glad to give such opinion on the subject.

as might be agreeable to your wishes, but I am not authorized to give my opinion at all on the subject, because the adjustment of these accounts rest with the paymaster alone, by the special act of Congress. If I were to express a private opinion, it would not have (or at least it ought not to have) any influence. If the paymaster reject any claim made on him, the claimant can only have redress by application to Congress. But I should suppose that if it should be a doubtful case he will report it as such for their opinion. If, on the contrary, his opinion be decidedly against you, *I doubt much the success of an application to them.* However, you will on this occasion judge for yourself, and any service which I may consistently render you may confidently rely on.

“I am, with esteem and respect, sir, your obedient servant,
“ROBERT MORRIS.”

Your committee are unable to discover any good reason why the claim of Colonel Livingston was suspended by Paymaster Peirce, after the passage of the act of December 31, 1781. But if there was any room for doubt, there could not or ought not to have been any excuse subsequent to the passage of the following:

Resolution in Congress, March 8, 1785.

“*Resolved*, That the officers who retired under the resolve of the 31st of December, 1781, are equally entitled to the *half-pay* or commutation with those officers who retired under the resolves of the 3d and 21st October, 1780.”

And yet your committee regret to say that in this, as in many other meritorious claims, owing to the utter poverty of the treasury at that time, that Congress never from that time *made any appropriation* for the payment of this or any other of the half-pay claims, except in individual cases. After the passage of this act, of which said Livingston seems not to have been informed, on the 25th of April, 1785. Colonel Livingston addressed a petition to the representatives in Congress, a copy of which is annexed, and is now on the files of the State Department, requesting a settlement for his services as lieutenant colonel and secretary of Mr. Jay, while minister to Spain. We also annex a copy of a letter of Colonel Livingston, of the 9th May, 1785, addressed to Messrs. Howell, Johnson, and Williamson, committee of the House.

But no further action appears to have been held on the premises, whether it was because the government having been unable to make any *provision* for the redemption of the *commutation certificates*, which caused them to be of very little value, or whether it was considered that the act of March 8, 1785, had rendered any further legislation unnecessary, does not appear.

Congress ordered the paymaster general to adopt the commutation act of March 22, 1783, and pay the *arrears*, together with the *five years' full pay*, instead of *specie* or *securities*, in the *certificates of the government*, payable to the officer bearer in ten years, with interest *annually*, while no securities of the government were worth more than

from *two to five cents on the dollar*, and the utter poverty of the government rendered it impossible to pay even the interest during the whole period of the confederation, and left no inducement to the memorialist for the further prosecution of his claim.

Your committee submitted, during the last session, their report and bill, to provide for the final settlement of these claims generally, in which they expressed their views very fully, to which your committee would respectfully invite the attention of the House. In that report your committee gave to these claims their most favorable consideration and expressed the opinion :

1. That the resolves of October 21, 1780, and other acts of Congress, promising half-pay for life to the officers of the continental army who should serve to the end of the war, or until the time of their reduction, formed a contract between the United States and the officers of the army, in their individual capacity, at a time when both were free to make it, founded upon a good and valid consideration.

2. That the officers fully performed and fulfilled the contract on their part, and by their services, sacrifices, and sufferings, gained the liberty and independence of the country.

3. That on the performance of said contract each officer, as an individual, acquired a *vested right of property therein*, of which he could not be divested "*without due process of law*," or by his own free and voluntary relinquishment, and any act of Congress impairing or affecting this right is repugnant to the Constitution and void.

4. That according to strict legal construction, these officers did not commute their promised half-pay for life by accepting the so-called commutation certificates; they in no respect having been in conformity to the act of 1783, did not stipulate in *what way* the securities were to be made, and the utter poverty of the government at that time precluded the *possibility of paying in specie*. And as the government made no provision for the payment of the *principal* nor the *interest* (which was payable annually) during the whole period of the old confederation, while none of the government paper was worth, during all that period, over one eighth of a dollar; that the act of 1783, being *conditional* in its *terms* as well as object, ought not and cannot, as it seems to your committee, be so construed as to *repeal* the act of October 21, 1780, or in any way impair the rights of creditors, who are entitled, under that act, to *half-pay*, no more than if the act of 1783 had never passed; that the government, in justice to her creditors, could only ask to be allowed the *nominal amount* of those certificates *pro tanto* in extinguishment of the *half-pay* contract; by that contract each officer became entitled from the United States to half-pay, according to the rank he held in the army from the close of the revolutionary war, or from the time of his discharge from the service until the period of his death, to be paid yearly and every year during that period, and for the performance of such contract on the part of the United States *the faith of the nation was solemnly pledged*. The committee also find that such officers were also entitled to an interest of six per cent. per annum on the yearly payments, and on the aggregate from the date of the officer's death to the time of settlement, under the resolution of Congress passed June 3, 1784, which provides "That

an interest of six per cent. shall be allowed to all the creditors of the United States for supplies furnished or *services done* from the time that payment became due." In alluding to this resolve, Chief Justice Gilchrist, of the Court of Claims, in a recent decision says: "No language could be more express or free from doubt than this. The resolution was passed from a feeling that it was just and right that interest should be paid from the time the half-pay became due, and it was a voluntary contract on the part of the United States, constituting a legal claim against them which no subsequent legislation could release without the consent of the other party." The above contract for half-pay, although made under the confederation, is equally binding upon Congress, for by the 6th article of the Constitution of the United States, section one, "all *debts* contracted or *engagements* entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the confederation."

The petitioners also rely upon the principles established in the case of Surgeon Baird; and as that case received the sanction of the Court of Claims and was *ratified by Congress*, your committee would call the attention of the House to that case.

The present case is free from any doubts which rose in that case. Therefore your committee are happy to be able to recommend this as one of those revolutionary claims in which there cannot be a doubt as to the service, or justice of the demand for half-pay for life. But as Colonel Livingston expressed a willingness to accept the five years' commutation, your committee report a bill for five years' full pay of lieutenant colonel of infantry, *without interest*. Also, for four hundred and fifty acres of bounty land. They have omitted the four years' arrears of pay and the twenty-four hundred dollars alleged to have been paid by Colonel Livingston for his personal expenses while secretary to Mr. Jay, during his stay in Spain as minister of the United States, until a further investigation at the several departments.

We annex herewith copies of the memorial of Colonel Livingston to Congress, dated April 25, 1785; also, that of his letter to Hon. Messrs. Howell, Johnson, and Williamson, committee of the House.

COPY OF MEMORIAL TO CONGRESS, APRIL 25, 1785.

To the honorable the representatives of the Uni'ed States in Congress assembled:

The memorial of Brockholst Livingston, esquire, late a lieutenant colonel in the army of the United States, respectfully sheweth:

That your memorialist, in the month of May, in the year 1676, engaged as a volunteer in the New Jersey regiment then on its march to Canada. That in the year following he was honored with a lieutenant colonel's commission, in which capacity he served until the year 1779, when he obtained leave of absence for twelve months to attend Mr. Jay to Europe, which permission was extended by a subsequent resolution until the further order of your honorable body.

That your memorialist continued with Mr. Jay in the character of private secretary, without any compensation, until the month of February, 1782, at which time he left Spain and was captured on his way to America by a British frigate.

That on his return he had the mortification to find himself deranged by the resolves of the 31st of December, 1781, which passed in his absence, as appears from a certificate from the then Secretary of War. He not being attached to the line of any particular State, your memorialist has not been able to obtain a settlement of his accounts, although he has applied for that purpose to the paymaster general and the late superintendent of finance, who have both referred him to your honorable body.

Your memorialist therefore prays Congress, taking the premises into consideration, would be pleased to make him such allowance for his services as private secretary, and in lieu of his pay, as they may think him entitled unto.

And that in other respects the paymaster general may be directed to settle the accounts of your memorialist upon the same principles and allow him the same emoluments as were granted to the officers who were reduced by the resolutions of the 21st October, 1780.

And your memorialist will ever pray, &c.

BROCKHOLST LIVINGSTON.

NEW YORK, *April* 25, 1785.

Enclosed herewith is a memorial which I must request the favor of your excellency to lay before Congress.

Sir, with great respect, your excellency's most obedient servant,

BROCKHOLST LIVINGSTON.

His Excellency RICHARD HENRY LEE, Esq.

APRIL 26, 1785.

Copy of letter to committee.

NEW YORK, *May* 9, 1785.

GENTLEMEN: Being informed that my memorial of the 25th ultimo has been committed to you, it may not be improper to lay before you a few papers relative to the facts referred to therein, in order to enable you with the greater facility to frame a report.

On finding myself deranged by the resolutions of the 31st of December, 1781, which had taken place during my absence, I applied to the then Secretary at War for a certificate of the time of my derangement, in order to procure a settlement of my accounts in the mode prescribed thereby.

This certificate, (which is herewith enclosed,) was transmitted above a twelvemonth since to the paymaster general. Not harboring the smallest doubt of the propriety of my claim to commutation, but to my great surprise objections were started in his answer, which I have also the honor to enclose. It is, however, worthy of remark that the paymaster's opinion is not decidedly against me, but that he

himself admits there is an obscure negative clause in my favor, and that according to his construction there is an apparent inequality in these resolutions compared with others of a former date. The clause alluded to by Mr. Pierce is in the words following: "*Provided, always, that nothing contained in these resolutions shall be construed so as to prevent or hinder any officer that shall retire as aforesaid from enjoying all the emoluments that he may upon retiring be entitled to by any former acts of Congress.*"

This proviso, if it has any meaning, must relate to half-pay promised the officers who retired under the resolutions of the 21st of October, 1780, for it is hardly possible to believe that Congress intended to place the officers who were deranged by the last mentioned resolves on a better footing than those who continued in the same war two years longer; and yet this injustice must result from the paymaster's construction. It will be trespassing, gentlemen, unnecessarily upon your time to urge my arguments, to set my claim to commutation or half-pay in a stronger point of view than a careful perusal of the resolutions already referred to must place it.

The letter from the superintendent of finance is enclosed with no other view than to show the propriety of my application to Congress, and that my case is within their cognizance only.

As to an allowance while secretary to Mr. Jay, though there be no resolve under which a claim of this kind can be made, yet as there is some difficulty attending the settlement of my accounts on account of my not having been attached to the line of any particular State, I should be satisfied with being reimbursed my expenses while abroad, in lieu of every claim, except that of commutation, which I may have against the public. Perhaps the committee will not think seven or eight hundred dollars a year too much for these expenses, when it is considered that in receiving that sum I relinquish demands which, if liquidated, would certainly amount at least to as many pounds. From this view of facts I dare flatter myself that the gentlemen who have my memorial before them will not think it extravagant to report as their opinion that a settlement be made with me in a manner somewhat similar to the prayer thereof.

With full confidence in their justice and that of Congress, I have the honor to be, with great respect, their very obedient and humble servant,

BROCKHOLST LIVINGSTON.

Hon. Messrs. HOWELL, JOHNSON, and WILLIAMSON.

HEIRS OF CAPTAIN ROBERT ORR.

[To accompany Bill H. R. No 922.]

MARCH 9, 1859.—Ordered to be printed.

Mr. FENTON, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the petition of the heirs of Captain Robert Orr, praying for a grant of land, having had the same under consideration, report:

That the State of Virginia, on the 2d day of January, 1781, ceded to the United States, for the benefit of said States, all right, title, and claim which the said State of Virginia had to the territory northwest of the river Ohio, subject to certain conditions annexed to the said deed of cession, which deed of cession, with the conditions annexed, the Congress of the United States accepted. The conditions were as follows:

“That a quantity not exceeding one hundred and fifty thousand acres of land, promised by the State of Virginia, should be allowed and granted to the then Colonel (now General) George Rogers Clark, and to the officers and soldiers of his regiment who marched with him when the posts of Kaskaskias and St. Vincent’s were reduced, and to the officers and soldiers that have since been incorporated into the said regiment, to be laid off in one tract, the length of which not to exceed double the breadth, in such place on the northwest side of the Ohio as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion, according to the laws of Virginia.”

Your committee further report that it further appears by the affidavits of several credible witnesses that Colonel Archibald Loughrey, from Westmoreland county, in the State of Pennsylvania, in the summer of 1781, raised three companies of volunteers for the purpose of joining the forces of General George Rogers Clark in the expedition against the Mohawk and Seneca Indians, inhabiting the country now belonging to the State of Ohio. That Captain Robert Orr, a resident of Westmoreland county, commanded one of the volunteer companies raised in Westmoreland county, and marched with his company under the command of said Colonel Loughrey to Wheeling, Ohio, expecting to join the forces under the said General Clark; but when they arrived at Wheeling they found General Clark had left that place a few days before they arrived, but had left boats for Colonel Loughrey and his men to follow them. That they took the boats thus left for them,

and somewhere near the mouth of the Big Miami river, Colonel Loughrey and his men landed to cook and eat some food, and were attacked by a large body of Indians, and the said Loughrey and a number of his men were killed and the remainder taken prisoners by the Indians, and never joined the forces under General Clark, as was intended. It further appears from an authentic history called "State Book of Pennsylvania," at page 268, that "Robert Orr, an Irishman by birth, settled in western Pennsylvania in 1773, and, partly at his own expense, raised a volunteer company in 1781, with which he joined General Clark's forces against the Indians on the Ohio. He was wounded and taken in that disastrous expedition, and remained prisoner at Montreal till 1783."

The committee therefore report that, upon the above statement of facts, and according to the principles which governed the committee in the case of the heirs of Colonel Loughrey, at the last session of Congress, that the heirs of the said Captain Orr are entitled to the same quantity of bounty land as if their father had actually joined the forces under General George Rogers Clark.

ARMSTRONG COUNTY, }
State of Pennsylvania. }

Personally appeared before me, the president judge of the court of common pleas in and for said county and State aforesaid, J. E. Meredith and A. Colwell, esqs., who, being sworn according to law, say: That they were well acquainted with Robert Orr, and from report he was in the war of the revolution; that he was taken prisoner by the Indians; his wife is now dead, and that Robert Orr and Chambers Orr are the only surviving children of Captain Robert Orr aforesaid.

J. E. MEREDITH.
 A. COLWELL.

Sworn and subscribed to before me, this 30th day of November, 1858.
 JOS. BUFFINGTON.

I do certify that I am well acquainted with the above witnesses, and know them to be men of truth and veracity.

JOS. BUFFINGTON,
*President Judge of the Tenth Judicial District of Pennsylvania,
 Including the County of Armstrong.*

STATE OF PENNSYLVANIA, }
Armstrong County, } ss.

I, Simon Truby, jr., prothonotary of the court of common pleas in and for said county, do hereby certify that Joseph Buffington, esq., whose name to the foregoing certificate appended, is now, and was at

that time, president judge of the 10th judicial district of Pennsylvania, composed of the counties of Westmoreland, Indiana, and Armstrong.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at Kittanning, this 30th day of November, A. D. 1858.

SIMON TRUBY, JR.,
Prothonotary.

PENNSYLVANIA, }
Westmoreland County, } ss.

Personally appeared before the subscriber, a justice of the peace in and for said county, James Kean, who, being duly sworn according to law, upon his solemn oath doth depose and say: That some time in the summer of seventeen hundred and eighty one, volunteers were raised in Westmoreland county, Pennsylvania, for the purpose of joining an expedition at that time making against the Mohawk, Seneca, and other tribes of Indians; that said volunteers were to march in the country now composing the State of Ohio; that the companies in Westmoreland county were under the command of Colonel Archibald Loughrey, and were composed of upwards of a hundred men under the command of said colonel. This deponent was attached to a company of rangers, under Captain Thomas Stokely; that they had volunteered to march under the command of General George Rogers Clark on the expedition; that Colonel Loughrey marched his men to Wheeling, where this deponent understood they were to join General Clark. On the arrival of the troops there they found that General Clark had left three or four days before, but had left four or five boats behind to carry on Colonel Loughrey and his men. From this place Colonel Loughrey sent a messenger (Richie Wallace) after General Clark; he brought word that Clark would wait for them at the mouth of some creek, the name of which is not remembered by deponent. Colonel Loughrey and his companies embarked in the boats left for them at Wheeling by General Clark, and arrived on that or the next day at the mouth of the creek; on their way down they took sixteen deserters from the troops of General Clark, and carried them along back. On their arrival at the creek they found General Clark and his troops had left. Colonel Loughrey then proceeded with his men after Clark in the boats. On the 21st or 24th of August, 1781, they landed on the north bank of the Ohio, about ten miles below the mouth of the Big Miami river, for the purpose of cooking some victuals; the river was then low; there was a sand-bar that reached into the river from the south side. As they were kindling their fires the Indians commenced an attack from an upper bank. Colonel Loughrey ordered his troops to the boats, to pass over to the sand-bar; as soon as they embarked and commenced moving over, a large body of Indians rushed from the woods on the bar and prevented a landing or making an escape, when the colonel

ordered us to surrender. There were about thirty men killed in the fight on the side of the whites. Within an hour or two after the fight, this deponent understood Colonel Loughrey was killed by a Shawnee Indian as he was sitting on a log; deponent within that time saw the scalp of the colonel in the hands of an Indian; the peculiar color of the hair caused deponent to know the scalp.

his
JAMES X KEAN.
mark.

Sworn and subscribed before me, this 25th August, 1843.

W McWILLIAMS.

I do certify that I am acquainted with James Kean, the foregoing deponent, and that he is a man of credibility, and that full credit is given to his testimony as such.

Witness my hand and seal this 25th August, A. D. 1843.

W. McWILLIAMS. [L. s.]

STATE OF PENNSYLVANIA, }
Westmoreland County, } ss.

I, David Fullwood, prothonotary of the court of common pleas of the county of Westmoreland, in the commonwealth of Pennsylvania, do hereby certify that W. McWilliams, esq., before whom the foregoing deposition was made, and whose name in his own proper handwriting is to the above certificate appended, was then, and now is, an acting justice of the peace in and for said county of Westmoreland, duly commissioned and appointed, and to all whose official acts and deeds full faith and credit are of right due.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Greensburg, the twenty-fifth day of [L. s.] August, in the year of our Lord one thousand eight hundred and forty-three.

DAVID FULLWOOD,
Prothonotary.

PENNSYLVANIA, }
Armstrong County, } ss.

Personally appeared before the subscriber, a justice of the peace in and for said county, Ezekiel Lewis, a resident of the county of Armstrong, Pennsylvania, who, being duly sworn according to law, upon his solemn oath doth depose and say: That, some time in the summer of seventeen hundred and eighty-one, volunteers were raised in Westmoreland county, Pennsylvania, for the purpose of joining an expedition at that time making against the Mohawk, Seneca, and other tribes of Indians;

that said volunteers were to march in country now composing the State of Ohio; that the companies in Westmoreland were put under the command of Archibald Loughrey, then a resident of Westmoreland county, who commanded said companies as colonel, and was received and acknowledged by them as their colonel in command; the troops rendezvoused on Sewekey or Jacob's swamps, in Westmoreland county; Colonel Loughrey had, when we started from the place of rendezvous, upwards of eighty men; the companies composing Colonel Loughrey's command were commanded by Captains Robert Orr and William Campbell; I was under the command of Captain William Campbell. Deponent says they marched from the place of rendezvous, he thinks, to McKeesport, on the Monongahela, and descended said river to Pittsburg; Captain Stokely joined the command of Colonel Loughrey, same place, before we got to Wheeling, (*don't recollect the place particularly*;) from Pittsburg we travelled by land to Wheeling, where we embarked in boats, and started down the Ohio river to join General Clark; in one or two days we stopped at the mouth of a creek, where we expected to meet with General Clark; when we arrived there, General Clark had gone on down the river; on our way down the river we took some deserters from General Clark's command, and carried them with us; Colonel Loughrey proceeded on down the river, intending to overtake General Clark, until the 24th August, 1781; about 9 or 10 o'clock we landed on the north bank of the Ohio for the purpose of cooking breakfast; we had killed a buffalo the evening before; where we landed was near the mouth of the Big Miami; as we were kindling fires, the Indians commenced an attack upon us; there were about forty of the whites killed, and the rest all taken prisoners, together with Colonel Loughrey and all his officers; in about two hours after we were taken, one of the Indians tomahawked Colonel Loughrey, sitting on a log; I saw him after he was killed, and his scalp was taken off; deponent saith he had been intimately acquainted with Colonel Loughrey for some years before the time of the campaign spoken of; knew he had a wife and some children; does not know how many. And further saith not.

EZEKIEL LEWIS.

Sworn and subscribed before me, 11th March, 1844.

JNO. R. JOHNSTON,
Justice of the Peace.

We do certify that we have been intimately acquainted with Ezekiel Lewis, the foregoing deponent, for the last twenty-five years, and that he is a man of truth and veracity; and that he is so acknowledged in the neighborhood in which he has resided since the time we have been acquainted with him.

Witness my hand and seal, 11th March, 1844.

JNO. R. JOHNSTON, [L. s.]
Justice of the Peace.

ROBERT ORR.

STATE OF PENNSYLVANIA, }
Armstrong county, } sct.

I, James Douglass, prothonotary of the court of common pleas in and for said county, do certify that John R. Johnston, esq., before whom the within deposition was taken, was, at the time of taking the same, an acting justice of the peace in and for said county, duly elected, commissioned, and sworn, to all whose official acts, as such, full faith and credit are due and of right ought to be given, as well throughout the county aforesaid as elsewhere; and that his signature thereto is genuine, and in his proper handwriting.

In testimony whereof, I have hereunto set my hand and affixed the [L. s.] seal of said court, at Kittanning, the 11th day of March, in the year of our Lord one thousand eight hundred and forty-four.

J. DOUGLASS, *Prothonotary*.

10

ALEXIS PORCHE—LEGAL REPRESENTATIVES OF.

[To accompany Bill H. R. No. 923.]

MARCH 3, 1859.—Ordered to be printed.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, having had under consideration the memorial of William M. Rankin, legal representative of Alexis Porche, for the confirmation of eight hundred arpents of land in the State of Louisiana, report:

That, as descriptive of the case, the decision of the Hon. T. H. McCaleb, judge of the United States district court for the eastern district of Louisiana, rendered in 1849:

“In this case (*Alexis Porche vs. The United States*) the plaintiff claims the confirmation of an inchoate grant or order of survey given by Don Estevan Miro in favor of Santiago Carrick, bearing date the 24th day of December, 1788, for a tract of land of twenty arpents front on False river, with the depth of forty arpents. The order says it shall join the lands of Pierre Sauvé; and the survey of Morgan, made in 1808, and that of the surveyor acting under an order of this court, show the true location of the land, according to the description and the order of survey and the petition of the grantee.

“It is satisfactorily shown to the court that the grantee was, at the date of the grant, an inhabitant of the province of Louisiana; that the order of survey or original concession was executed and signed by Governor Miro, who then had authority to grant lands, and that the same was made conformably to the laws and usages of the Spanish government of the province. It is further shown that the plaintiff has, by several mesne conveyances, shown as exhibits in this case, become the assignee of the original grantee.

“It appearing, therefore, to the court that the tract of land granted was, according to the laws, usages, and customs of the Spanish government, the property of the said grantee at the date of the treaty of cession in 1803, and is protected by the stipulations of said treaty, and by the law of nations—

“Now, this court, acting under and by virtue of the act of Con-

gress of May 26, 1824, entitled 'An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims,' and also an act approved on the 17th June, 1844, entitled 'An act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama south of the 31st degree of north latitude, and between the Mississippi and Perdido rivers,' doth order, adjudge, and decree, and it is hereby ordered, adjudged, and decreed, that the petitioner, Alexis Porche, is the true and lawful owner of, and has good title against the United States, the defendants, in and to all the lands and hereditaments claimed by him in his petition, and that he be forever quieted and confirmed, as against the United States, in the ownership and possession of the same, to wit: Twenty arpents front, with the usual depth of forty arpents, situated in the State of Louisiana, in the parish of Point Coupée, on False river, joining the concession of Pierre Souvé, being the lower side of forty arpents front, with the depth of forty arpents, confirmed to Antonio Decuir."

From this decision an appeal was taken to the Supreme Court of the United States. That Court, at its December term, 1851, (12th Howard, page 426,) reversed the judgment of the lower court, on the ground of its want of jurisdiction over cases where petition was not presented before the 17th June, 1846. The Court said:

"On the 8th March, 1848, Porche filed his petition in the district court, claiming a confirmation of an order of survey made by Governor Miro in 1788. It is not necessary to state the title, as the case went off on a question of jurisdiction." "And as the petition was not filed within the time limited by law, it is not necessary to examine into the merits or want of merits of the claim. The decree of the district court must be reversed, and a mandate issued directing the petition to be dismissed."

The parties in this case, and those under whom they hold, having (under the circumstances detailed) been in undisturbed possession, occupancy, and cultivation of the lands in question for half a century or more, your committee are of opinion they should be quieted in their title, and herewith report a bill, and ask its adoption.

PIERRE CAZLARD.

[To accompany Bill H. R. No. 924.]

MARCH 3, 1859.—Ordered to be printed.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the memorial of Pierre Cazlard, for the confirmation of certain lands in Louisiana, have had the same under consideration, and report:

That the lands claimed, amounting to 511 acres, are shown by various mesne conveyances to have been in the occupancy, ownership, and cultivation of private parties for more than half a century, and have been withheld by the government from sale or location in any way whatever.

Relying upon the completeness of their ancient title, no party in the occupancy of these lands ever believed it necessary to present their claim to a board of commissioners, and only ask a recognition of title now, to be quieted in their possession, several attempts having been made recently to locate land scrip thereon, but rejected by the Commissioner of the Land Office. As all the legislation of Congress with reference to the lands in Louisiana, claimed and held as these have been, recognize such ownership as is shown in the case now presented, and as there is no adverse claim, your committee see no objection to the confirmation desired, and herewith report a bill.

CHARLES TRICHE AND EDWARD RODRIGUES.

[To accompany Bill H. R. No. 925.]

MARCH 3, 1859.—Ordered to be printed.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, having considered the memorial of Charles Triche and Edouard Rodrigues, report :

That under the act “for the final adjustment of claims to lands in the State of Louisiana,” the claim No. 28, in the reports of the Board of Land Commissioners, dated at New Orleans, 22d November, 1837, is presented in the following words :

“Charles Triche and Edward Rodrigues claim a tract of land in the parish of Assumption, situated on the left bank of the Bayou Lafourche, containing three arpents in front on said bayou, by forty arpents in depth, bounded above by land of Vincent Elfert, and below by land of Francois Bourg. This is a part of a tract of land, of six arpents in front and forty in depth, surveyed in the year 1790, by order of Governor Miro, in favor of Jean Nicholas Bertrand, under whose title the claimants hold by virtue of conveyances. The said tract of land is now claimed in virtue of said purchase, and of an uninterrupted habitation and cultivation ever since the above mentioned period until this day. We are, therefore, of opinion that this claim ought to be confirmed.” Mr. Whitcomb, who was then Commissioner of the Land Office, not concurring in this recommendation of the board, but without assigning any reason therefor, the claim was passed over by Congress without taking any action.

The claim to the other three by forty arpents, with the same show of title as is presented in the case under consideration, having been confirmed by Congress, your committee see no reason why the prayer of the memorialists should not be granted ; and the more particularly as the habitation and cultivation which, in 1837, was proved to have existed since 1790, has been continued to this time.

A bill is herewith reported.

CHARLES THOMAS AND ROWAN HODGES

IT was ordered that the following

March 2, 1857. Ordered to be printed.

Mr. Speaker, from the Committee on District Claims, made
the following

R E P O R T

of the Committee on District Claims, having considered the memorial
of Charles Thomas and Rowan Hodges, respectfully

submitted to the committee for the final adjustment of claims to lands in
the State of Louisiana, the claim No. 25, in the report of the board
of land commissioners dated at New Orleans, 25th November, 1857,
is presented in the following words:

Charles Thomas and Rowan Hodges claim a tract of land in the
parish of Assumption, situated on the left bank of the Bayou Lafourche,
containing three arpents in front on and between, by duly agents
in 1857, bounded above by land of Vincent Bland, and below by land
of Francis Bland. This is a part of a tract of land, of six arpents in
front and forty in depth, surveyed in the year 1795, by order of Governor
Blanc, in favor of Jean-Baptiste Bland, under whose title the
claimants hold by virtue of conveyance. The said tract of land is
now situated in a tract of six arpents, and of an undivided half-
arpent and contains an area of about one hundred arpents. The
claimants and their heirs have since the above mentioned period until this
day, by a continuous and undisturbed possession, and in right to be con-
sidered as the owners of the same, who was then the descendant of the land
claimants, and succeeded to this claimant's claim of the land, but without
any record or deed therefor, the claim was passed over by the
without taking any action.

The claim to the other tract by duly agents, with the same show
of title as is presented in the case under consideration, having been
considered by Congress, your committee are no reason why the proper
of the memorialists should not be granted; and the more particularly
as the petition and affidavit on which, in 1857, was granted to have
extended since 1850, has been continued to this time.
A bill is herewith reported.

ELIAS AND ABIJAH RUSS, OF LOUISIANA.

[To accompany Bill H. R. No. 926.]

MARCH 3, 1859.—Ordered to be printed.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom the memorial of E. and A. Russ, of Louisiana, was referred, having examined the same, beg leave to report :

That they were actual settlers, and confirmed as such by the act of Congress of the eighth May, eighteen hundred and twenty-two, entitled "An act supplementary to the several acts for adjusting the claims to land and establishing land offices in the district east of the island of New Orleans, in the State of Louisiana."

The parties show, by the certificate of confirmation and order of survey, that they were entitled to six hundred and forty acres of land ; and they show by a certified copy of the map and letter of the Commissioner of the General Land Office, that they have lost all of their land, except one hundred acres ; five hundred and forty acres of the land confirmed to them having been taken from them upon re-survey, by Spanish patents.

Wherefore your committee, seeing that the parties have had five hundred and forty acres of their land taken from them in the manner stated, report a bill allowing them to locate five hundred and forty acres of land upon any of the public lands of the United States government in the same land district subject to private sale at one dollar and twenty-five cents per acre or less.

CITIES OF PHILADELPHIA AND NEW ORLEANS.

[To accompany Bill H. R. 927.]

MARCH 3, 1859.—Ordered to be printed

Mr. GILMAN, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom were referred the memorials of the City of Philadelphia praying for confirmation of title to the Bastrop lands, have had the same under consideration, and after fully examining into the facts involved do now report :

The Baron de Bastrop, a Flemish emigrant, in the then Spanish province of Louisiana, having conceived the idea of forming a colony in the district of Ouachita for the cultivation of wheat to supply the markets of other Spanish possessions further to the south, addressed, on the 20th June, 1796, a memorial to the Baron de Carondelet, governor of the province, setting forth his designs, and his desire thereby “to promote the population and agriculture of Ouachita,” and that “being about to pass into the United States of America to conclude the plan of emigration which he has projected, and to return with his family, represents to your lordship that it is absolutely indispensable that on the part of the government there should be designated a district of about twelve leagues square, in which may remain included the Bayou Siar and its vicinity, in order that without the least obstacle or impediment those families may proceed to locate themselves upon them, which the petitioner is going to introduce, under the express conditions that concessions of land are to be gratis, and that under no title or pretext can they exceed the quantity of four hundred square arpents at most.” And the memorial continued—“It becomes also indispensable that the government should charge itself with the transportation and support of the families which the petitioner shall have introduced from the post of New Madrid to that of Ouachita, by supplying them with provisions for the subsistence of the first months, and facilitating to them the sowing of the necessary seed ; granting to the inhabitants who are not Catholics, the liberty of conscience enjoyed by those of Baton Rouge, Natchez, and other districts of the province ; and the government being pleased, finally, to fix the number of families which the petitioner is to introduce.”

On the day succeeding, the governor "considering the advantages which must result from the establishment projected by the Baron de Bastrop," ordered the commandant of Ouachita to "designate twelve leagues square, half on the side of the Bayou de Siar and half on the side opposite the Ouachita, for the purpose of proceeding to locate upon them the families which the aforesaid Baron may direct, it being well understood that to none is there to be given a greater concession of land than of four hundred arpents at most, gratis and free of all dues, inasmuch as the object of this establishment is to be only for the cultivation of wheat." The government was also to defray the expense of transportation of the families from New Madrid to Ouachita, and to give them provisions for their maintenance during six months and to supply them with their seed for sowing; the petitioner might introduce five hundred families, and it was finally provided "that if, after the lapse of three years the greater part of the establishment shall not have been made good, the twelve leagues square destined for the families which the señor petitioner will send, shall be *occupied* by the first families that may present themselves." This order of the governor, Baron de Carondelet was duly registered, and became a part of the provincial archives. It appears that de Bastrop, with a view of constructing mills for grinding the wheat to be grown on the lands which he thus proposed settling, had on the 12th day of June, 1796, petitioned the governor for the privilege of building a dam across the Bayou Siar, and for a grant of six toises (fathoms) of land on each side of the Bayou Barthelmy from its source to its mouth;" and that on the same day that the designation and setting apart of the twelve leagues square of the royal domain was ordered by the governor, that functionary addressed a letter to the Baron de Bastrop in which it is set forth that "with attention to the advantages which must result to the population of the Ouachita and that of the province in general, from the encouragement of the cultivation of wheat and construction of flour mills which the petitioner intends to make at his expense, I grant him in the name of his Majesty and using the power which he has conceded to me, leave to close the Bayou de Siar, where he may establish the mills, with a dike at the place most suitable for his works; I likewise grant him the *exclusive* enjoyment of six toises of land on each side of the Bayou Siar, from its source to its mouth, in order that he may construct the works and embankments necessary to his mills; it being well understood that in this grant it is not intended to prohibit the free *navigation* of said bayou to *other* inhabitants who may make use of it, without, nevertheless, it being permitted to them to cast any bridge or embarrass the navigation, which at all times is to remain free and unimpeded, under the conditions expressed; when the mills have been constructed which he may see fit, *he may dispose of them and of his adjacent lands as property belonging to him entirely*, in virtue of this decree by which the proceedings of survey, which the commandant, Don Juan Filhiol, shall make out and remit, shall be extended in consequence, in order to provide the party concerned with the corresponding title in form (*titulo in forma*). It being a formal and express condition of this grant that at least one mill be found constructed within two years,

since otherwise it shall remain annulled." The committee will observe here that this condition as to the construction of a mill within the time limited, appears to have been complied with.

On the 10th of June, 1797, the Baron de Bastrop presented to the governor the following memorial:

"To his excellency the Señor Baron de Carondelet, governor general of the province of Louisiana, &c.: Don Philip de Bastrop has the honor to observe to your lordship, *that the twelve leagues square, which your lordship has granted to him by his contract, are found in part overflowed and occupied by ancient inhabitants; in consequence of which, he prays that your lordship will be pleased to grant him the same quantity of land to be taken upon the river Ouachita, and the Bayou de Siar and Barthelemy, where it will be most convenient to him, without prejudice to the lands which your lordship has granted to the Señor de Maison Rouge, in the Prairie de Chattellerau.* A favor which he hopes to receive, from the upright justice which your lordship administers.

"P. DE BASTROP."

Upon this request was endorsed, by the governor: "New Orleans, 10th June, 1797—As he requests, let it be despatched by the secretary's department, in the form solicited."

On the 14th June, 1797, the surveyor general, in obedience to the orders so made on the petitions of the Baron de Bastrop, made his return of the surveys, accompanied with a figurative plan, describing and fixing the limits of the twelve leagues conceded to De Bastrop for his establishment, under the changes suggested in his petition of the 10th day of the same month above quoted. This return is in these words:

"No. 922.

"Louisiana, year 1797, post of Ouachita, Don Carlos Trudeau, surveyor royal and special of the province of Louisiana, &c.

"I certify that the present plan contains one hundred and forty-four plane leagues of surficies; each league forming a square, which has for its side two thousand five hundred toises, measure of the city of Paris, according to the use and custom of this colony, which tract is situated in the post of Ouachita, at about eighty leagues above the entrance of the same river into the Red river; said tract adjoining on the southwest part the eastern shore of the river and bayou Ouachita, Barthelemy, and Siar, conformably to the red line bordering said river and bayou, &c.; to the south, by a line directed from the south sixty-five degrees east, of three leagues and one mile in length, to begin from the bank (C) of the Bayou de Siar, until it encounters the apex (*ultima*) of the junction of the same Bayou Siar with the Bayou Barthelemy, the said point (A) serving as the base of the line of admeasurement (A B,) of twelve leagues in length, parallel to the plane of the Bayou Barthelemy, from the point (A) until the last of the said twelve leagues, the point (B) terminating in the mouth of the Bayou Termino. The limits (D. E. F. G.) are parallel, directed north

fifty-two degrees east, without regard to the variation of the compass, this varying eight degrees to the northeast; and that it may appear, I give the present, with the figurative plan which accompanies it, *in favor of the Señor Baron de Bastrop*, June 14th, of the year one thousand seven hundred and ninety-seven.

"I, the present surveyor."

"This is found noted in book A, No. 1, folio 38, at No. 922, of the proceedings of survey, and copied from its originals, remitted in duplicate to the office of the secretary of government by verbal order of the señor commandant general, the Señor Baron de Carondelet, *ut supra*.

"CARLOS TRUDEAU."

That De Bastrop had already begun the fulfilment of his contract for the introduction of the stipulated number of families, entered into the preceding year, must be evident from the tone of the following official letter of the governor, and the further contract into which he had entered on the 16th June, 1797, to supply rations to the emigrants already brought into the colony. We quote the latter, in the first place, and it will be found in vol. 2 of White's New Recopilacion, p. 407:

"The Baron de Bastrop contracts with his majesty to furnish, for the term of six months, rations to the families which he has latterly introduced at the post of the Ouachita, which are to be composed of twenty-four ounces of fresh bread, or an equivalent in flour, twelve ounces of fresh beef, or six of bacon, two ounces of fine *menestra*, or three of ordinary, and one thousandth part of a celemin of salt; for which there is to be paid to him, by the royal chests, at the rate of a real-and-a-half for each ration. For which purpose there shall be made out monthly a particular account, the truth and regularity of which shall be attested at foot, by the commandant of that post. Under which conditions I oblige myself, with my person and estate, to the fulfilment of the present contract, subjecting myself in all things to the jurisdiction of this general intendency. In testimony of which I sign it at New Orleans, the 16th of June, 1797.

"BARON DE BASTROP."

This contract was approved on the same day by Don Gilbert Lunnard, principal contractor or accountant of the army for the province, he retaining the original and transmitting copies to the Intendant.

The governor's letter to De Bastrop was as follows:

"NEW ORLEANS, 18th of June, 1797.

"Whereas, on the part of the Señor Intendente, by reason of the scarcity of funds, the suspension of further remittances of families has been solicited until the decision of his Majesty; there should be no prejudice occasioned to you by the last paragraph of my decree, which expresses that if, at the end of three years the greater part of the establishment shall not have been made good, the families which may present themselves shall be located within the twelve leagues destined for the establishment which you have commenced; and it shall only

take effect two years after the course of the contract shall have again commenced, and the determination of his Majesty shall have been made known to you.

“ You will always remain assured that, on my part, I will religiously observe the engagements which I may have contracted, a maxim which has constantly distinguished the Spanish nation.

“ God preserve you many years.

“ BARON DE CARONDELET.

“ To the SENOR BARON DE BASTROP.”

In furtherance of this solemn declaration that his engagements towards the Baron De Bastrop should be “ *religiously observed*,” and in order that he might become clothed with the TITLE IN FORM to the twelve leagues square, already surveyed, its limits fixed, and a figurative plan thereof made and delivered in favor of De Bastrop, by the royal surveyor, the governor on the 20th day of June, 1797, executed the following instrument :

“ CONCESSION.”

“ The Baron De Carondelet, Knight of the Religion of St. John, Field-Marshal of the Royal Armies, Governor General, Vice Patron of the Provinces of Louisiana and Florida, Inspector of their troops, &c., &c. :

“ Whereas the Baron De Bastrop, in consequence of the petition under date of the 20th of June of the year last past, and decree of the 21st of the same, has commenced the establishment of Ouachita, which thereby he stipulated with the government ; in order to avoid all obstacle, difficulty, and embarrassment hereafter, and that with all facility the families may be located, which, to the number of five hundred, the said Baron is successively and *proportionally* to introduce or cause to be introduced, we have determined to designate the twelve leagues for said establishment, in the terms, with the limits, landmarks, and boundaries, and in the place which is designated, fixed and marked out by the figurative plan and description which go as a caption of this TITLE, which are made out by the Surveyor General Don Carlos Trudeau ; it having appeared to us to be thus most expedient to avoid all contestation and dispute, and approving them, as we do approve them, exercising the authority which the King has granted us, WE DESTINE AND APPROPRIATE, IN HIS ROYAL NAME, THE AFORESAID TWELVE LEAGUES, in order that the said Baron De Bastrop may establish them in the terms and under the conditions which are expressed in the said petition and decree. We give the present signed with our hand, sealed with the seal of our arms, and countersigned by the undersigned, Honorary Commissary of War and Secretary for his Majesty, of this Commandancy-General, in New Orleans, on the 20th of June, 1797.

“ The BARON DE CARONDELET. [L. s.]

“ ANDRES LOPEZ DE ARMESTO.”

That the Baron de Bastrop did exercise acts of ownership over the territory included within the limits so determined, set apart and appropriated, is clear ; and so far as there is any evidence as to the origin of the title to their holdings within it, on the part of the families introduced by him under his contract, they are derived *from him* and not from the government or any of its officials. Nor does his action as owner and proprietor of the soil included within the survey seem to have been limited to the allotment of tracts of four hundred arpents square, to settlers ; for in the year 1799, and by formal act before a Royal Notary Public in the city of New Orleans, the official residence of the governor general, and where the fact of so large a sale was doubtless the subject of general remark in so small a community as that city then was, the Baron De Bastrop sold and conveyed to Abraham Moorhouse, in full ownership, two-third parts of the said tract of twelve leagues of land, so conceded or granted by the Baron De Carondelet, for the round sum of \$350,000 ; and the said Moorhouse and his assigns or representatives remained thereafter in full and complete possession of the land so conveyed to him, until about the year 1846, having in the meanwhile not only paid the taxes thereon assessed by the local authorities of the Territory and State of Louisiana, but also a direct tax levied on the same under the authority of the United States in the year 1816.

It has never, so far as your committee are informed, been contended that the land included within the metes and bounds specified in the above recited report and figurative plan of survey by Don Carlos Trudeau was delivered by the Spanish officials to those of France, as a part of the royal domain, upon the retrocession to the latter country, of the colony of Louisiana, under the treaty of San Ildefonso, nor that it was so delivered by the officials of the French republic to the commissioners of the United States, under the treaty of cession of April 30, 1803. Indeed, the figurative plan or plat of survey, made by Don Carlos Trudeau, expressly termed the land within its lines of boundary, as the "*concession de M. le Baron de Bastrop*," or "*grant to the Baron de Bastrop*," and those without them, as the "*Dominio de su majestad*," or "*domain of his majesty*."

To the more complete understanding of the question involved in this case, as to whether the documents above referred to were translat-ive of the title in favor of the Baron de Bastrop to that portion of the royal domain included in the survey of Trudeau, it may be well to dwell for a moment on some points of the policy pursued by Spain for the encouragement of the population and cultivation of her colonial possessions. The Code of the Indies was very full and explicit on this subject, and throughout it clearly shows that it was a cherished policy on the part of the sovereigns of Spain to encourage settlements and the development of the natural resources, agricultural, or mineral, of her vast domains in the new world, by liberal grants of lands, and so far as those in her North American possessions were concerned, by a relaxation in favor of Protestant immigrants, of her rigid rule of entire obedience to the faith and discipline of her national church. Every head of a family coming into Louisiana was entitled to a concession or grant of a certain quantity of public or royal lands, while

for those enterprising and adventurous individuals, who acted as *pobladores* or populators, and proposed the introduction and settlement within a colony of a considerable number of people, a liberal compensation, generally in the shape of grants of lands favorably situated, was generally provided as a reward for the benefits and advantages resulting from such a step. The favorite policy was the introduction of families, and two persons were in the province of Louisiana, at least, regarded as "a family." Under this system of law, had the Baron de Bastrop introduced into that province, without any express contract, thirty families, he would have become entitled as a reward to sixteen square leagues of land, or four leagues square. Hence, it will be seen, that outside the terms of his proposals, and the grant from the governor based upon them, he would, on the introduction and settlement of the five hundred families or one thousand persons for which he did contract, have been entitled to a grant *in full property* of five hundred and thirty-three square leagues of land from the royal domain in his recognized character as *poblador*. In the present case, De Bastrop had, before the order of the governor suspending the further execution of his obligations under the contract, brought into the colony four hundred persons, or two hundred families, and therefore under the law had already become entitled to at least as much land as was included in Trudeau's survey.

It must be evident, therefore, that in the proposals made by the Baron de Bastrop on the one hand, and accepted by the Baron de Carondelet on the other, it was the intention of the parties to modify to the extent indicated by them respectively, the general law on the introduction of immigrants; the *poblador* being willing, in consideration of the royal treasury defraying the expenses of the transportation of the families which he proposed to introduce, from New Madrid, his place of rendezvous, to the Ouachita, and their subsequent maintenance for six months together with the furnishing them seed for sowing their first crop, to take much less land than he would have been entitled to under the laws; while the government appreciating fully the advantages to result from his project, agreed to his terms, with the stipulation that he should make a free concession or grant of not more than 400 arpents to each family, so as to secure to the State a number of wheat growing farmers, and that the settlement of the entire number stipulated for, should not be delayed beyond a stipulated time. If it be objected to the grant in this case and that of the Marquis de Maison Rouge, made on almost the same terms and conditions, on the 17th March, 1795, that they do not resemble contracts for settlement and cultivation made in other colonies of Spain, it must be remembered, that the policy of that power as to the settlement and working of her vacant lands was as diverse and varied almost as much as her colonies were numerous. In Mexico and Peru for instance, mining was encouraged, in Cuba, the production of sugar and coffee; in some colonies stock farms, and in others, broad fields of grain were deemed most worthy of encouragement. In the cases of De Bastrop and Maison Rouge the culture of wheat and the manufacture of flour for the supply of both Louisiana and the West Indian colonies was the object, and to attain this end, not only was land con-

ceded to the pobladors, but there was also a relaxation of the law which made public and common the beds and banks of streams, in their favor, so as to enable them to construct dams and flouring mills, at such places as they might deem convenient, and they were conceded the *exclusive enjoyment* but *not the property* in the beds and for a certain space on each bank of the streams specified.

It has been said that under the conveyance made by De Bastrop to Moorhouse in 1799, the latter and his assigns remained in possession of the property conveyed until the year 1846. In the suit subsequently instituted in the district court of the United States for Louisiana, on the part of the cities of New Orleans and Philadelphia, as legatees to test the title to the land bequeathed them and included within the grant to De Bastrop, a verdict and decree were rendered in favor of the plaintiffs, but on the appeal taken by the United States, the same were reversed on the grounds principally, that the words used by the Baron de Carondelet in the concession above quoted, did not vest any fee in the Baron de Bastrop to the lands specified, but only in the "establishment" he was founding, as he, in the opinion of the majority of that learned tribunal, (the judges standing five to four,) was only stipulating for a monopoly of flour manufacture, and that besides, he had not complied with the conditions precedent set forth in the body of the grant.

In the case of *Smith vs. The United States*, (10 Peters' Rep., —,) the Supreme Court of the United States, with regard to a grant of lands affirmed to have been made by the Spanish authorities of Louisiana, held that in such cases it would be guided by the rule that whenever, under the laws, usages, and customs of the country in possession when the grant was made, the same would have been perfected had that country remained in its possession, the grant was binding on the power acquiring by treaty. Under this sound and undeniable principle of law it appears to your committee that, in order to test fairly the question whether title passed to the Baron de Bastrop under the concession made by the Baron de Carondelet on the 20th of June, 1796, it would be well to ascertain what was the contemporaneous construction placed on that instrument by other provincial authorities, and also what, under the rules of interpretation followed by Spanish judges and lawyers, would be the construction in a Spanish court were the same in question before such a tribunal.

While the Baron de Carondelet was the governor of Louisiana, Don Juan Ventura Morales was the intendant or treasurer of the province. It will be remembered that it was on the representation of the latter as to the want of funds that the governor wrote to De Bastrop, suspending the further introduction of his families into Ouachita until further orders. The intendant, on the 16th of October, 1797, addressed a letter to one of the members of the home government, a translation of which will be found in volume 2, page 473, of White's *Recopilacion*, in which he represents that much injury had resulted to the king's interests from the fact that the disposal of the royal domain, instead of being left with the intendant, was confided to the governor, who often, through ignorance of the real condition of the treasury, made injurious concessions to individuals, by assuming obli-

gations which the government was not prepared to meet; and he remarks: "As an instance of what I here state, observe the contract between Baron de Carondelet and Baron de Bastrop for the settlement of fifteen hundred Protestant families in the one hundred and forty-four square leagues of plane ground in the district of Ouachita, *granted* by the governor on condition that the royal *hacienda* should pay the expense of transporting those persons from New Madrid to their place of settlement, of maintaining them for the first six months, and giving them seed for their first planting." On these representations of Morales the king changed the power of granting or otherwise disposing of the vacant public domain from the governor to the intendant, but neither the sovereign nor his intendant in Louisiana ever annulled, or attempted to annul, the previous act of the governor, or attacked in any manner, so far as your committee are advised, its entire validity, or the rights of property which it vested in the Baron de Bastrop and his assigns.

As to the construction of the contract and the subsequent "*concession*" under the Spanish law, your committee concur with the minority of the court in giving a controlling weight to the opinions of three very eminent Spanish juriconsults, Señores Pacheco, Cortina, and Olozaga, given on a submission to their perusal of the "*concession*" in favor of the Baron de Bastrop. These opinions were given in the year 1849, and were properly authenticated by the minister of the United States at Madrid, and laid before the court in the case of *The cities of New Orleans and Philadelphia vs. The United States*, (— Howard's Rep., p. —;) and in alluding to them, in the dissenting opinion in that case, Justice McLean says that he had been informed by the highest Spanish authority in this country that the authors occupied the very highest position at the Spanish bar, one of them, Señor Cortina, having been minister of justice in the Spanish cabinet, and each of the others prime minister.

It is not the design of your committee to swell this report, necessarily somewhat voluminous, by inserting the opinions referred to at length. The most elaborate opinion is by Señor Pacheco, and it opens thus: "The question which is agitated in the Supreme Court of the United States of America, with respect to the property in certain lands assigned or granted in 1796 and 1797 to the Baron de Bastrop by the governor of Louisiana, cannot present, in my judgment, any difficulty to any Spanish lawyer who examines attentively the documents which have been laid before me, and who fixes his consideration upon our colonial usages, and the laws of our *Recopilacion de Indias*." He then reviews all the documents set forth in the former part of this report, and, with regard to the effect of the survey and destination of the land included in the grant, says:

"The land surveyed and designated is from that day the property of the Baron de Bastrop, with the conditions following: 1. The ordinary conditions which, according to the laws, were to be complied with by all *pobladores*, to live upon the lands and to commence working or planting them; 2. Those specially stipulated with him, the immigration, when possible, of five hundred families, and the sub-distribution among them of portions of land not exceeding 400 arpents

“Any other interpretation is inadmissible. It cannot be supposed that the Baron de Bastrop should employ his activity, his industry, his life for the benefit of the Spanish government and of a Spanish colony, to which he did not belong even by birth, without exacting or expecting from it remuneration of any kind. This would be absurd. This cannot even be suggested.

“Nor can it be supposed that the Baron de Bastrop would stipulate for remunerations of another species; as well because they were not according to usage in Spanish colonies, as has been said, as because such an hypothesis, to be admitted, ought to be founded on some data—which do not exist.”

And with regard to the terms used by the governor in his act of concession, dated June 20, 1797, in which reference is made to Trudeau's survey and plan as the caption, “*we do destine and appropriate*,” Señor Pacheco continues:

“‘*Destining and appropriating, appropriar; rem alicui adjudicare* in his royal leave, the *said twelve leagues*, that the said Baron de Bastrop may establish them in the terms, and under the conditions which are set forth in the said petition and decree.’ Here we have the effective words. ‘Destinary appropriar,’ is to grant and deliver as property. In this, it appears to me, there can be no sort of doubt. ‘Destining and appropriating the twelve leagues to the establishment of the Baron de Bastrop,’ means the delivering them to his proprietorship and dominion, he complying with the conditions with which they were petitioned for and granted.

“It cannot, therefore, be said in this case as has been said in another, more or less resembling it, that the present documents embrace only a contract for the immigration of colonists, and not a grant of lands. We have here the one and the other, and very strictly interlaced. The concession was offered for the purpose of populating, and with the charge (duty) of populating. It was perfected, regulated, carried into effect, for in fact, the colonists were introduced, or the introduction had been commenced.”

Señor Cortina, concurring in this opinion, says:

“For me there can arise no manner of doubt that the property in the twelve leagues which were the subject of the grant, was acquired by the Baron de Bastrop without other charge or dependence than those which were the consequences of the general conditions to which, by the laws of the Indies, all *pobladores* were subject, and the special conditions of this case. This is demonstrated conclusively by the reasons which have been applied to it in the opinion referred to which is before me, and which I adopt in all its parts, and especially and signally as to the title of concession, the point which principally and above all deserves attention. In it are employed the words properly called *effective*, ‘to destine and appropriate,’ and the last especially, as well legally as vulgarly signifies, ‘to make the property of,’ so that under whatsoever aspect the question is looked at, the twelve leagues, by virtue of the said concession, became the property of the Baron, and the property which he acquired in them, was the allodial and complete property recognized by our laws, without other trammels than these in the general conditions imposed upon all *pobladores*, and the

special ones of this case; and it appears that if these last were not fully complied with, it was not through the fault of the Baron, but through obstacles opposed to him by the authorities of the colony themselves. His failure of compliance cannot prejudice or diminish in the smallest possible degree the right which, by the concession, he undoubtedly acquired."

And finally, Señor Olozaga, concurring with the two other juriconsults, and with particular reference to the first order of survey directed by the governor to the commandant of Ouachita, says:

"The despatch, No. 2, of the governor of Louisiana would give, of itself, a right to Baron Bastrop to the land in question, leaving it to his charge to prove that he had done all which was to have been done on his part to carry into effect the immigration which he had proposed. This being proved the land would have to be set apart, and perhaps there might occur some doubt as to its extension, to those who might not be well versed in our legislation of Indias, and in the mode in which these concessions were made. But first, the title or document of concession extended in the usual form in New Orleans, 20th January, 1797, it results—1st, that the designation was made with the limits, metes, and bounds, and in the spot, which the figurative plan accompanying that document indicates, fixes, and delineates; and 2d, that in the name of the King of Spain, and making use of the power which he had granted to the governor of Louisiana, this governor declares and appropriates, that is to say, adjudicates and passes to the property of the Baron Bastrop the land comprehended in those limits and delineated in that plan."

Taking into consideration, therefore, the action, or rather non-action of the King of Spain when informed of the nature and extent of the grant to the Baron de Bastrop; that of the intendant of the province, who disapproved it when made, and who afterwards was clothed with the disposition of the vacant royal domain, and who never attacked either De Bastrop or his assigns in their rights and possessions under the grant, with the very clearly expressed opinions of the Spanish lawyers above quoted, it seems to your committee that the right of property, or, in language more in accordance with the common law of the United States, the fee simple of the lands described was vested in the Baron de Bastrop, and as such was protected under the terms of the treaty of cession of Louisiana to the United States of April 30, 1803.

It must be borne in mind that there is no evidence that the Baron de Bastrop voluntarily failed to comply with the conditions of his grant; the immigration of the families he proposed to introduce was suspended by the governor out of consideration for the royal treasury, and not on the solicitation or for the benefit of the baron de Bastrop. The default was therefore the act of the granting party, and it would, in the opinion of your committee, be a harsh measure to hold de Bastrop and his assigns liable for what was evidently beyond their control, and for the acts of the king of Spain's own agents. It certainly cannot be seriously contended that Spain could at once prevent the performance of the conditions of the grant, and then impose a forfeiture on that account on the grantee.—(6 Peters' Rep., 746.)

While considering the case of the legal representatives of the Baron de Bastrop on the conscience and equity of Congress, it may not be amiss to dwell for a brief moment on the principles decided by the Supreme Court in the case of the United States *vs.* P. B. Reading.— (18 Howard's Rep., page 1.)

In that case the court held that in the case of a grant of land in California, made by the commandant general, with the condition that the grantee should build a house on it, and have it inhabited within a year from the date of the grant, and also that he should obtain judicial possession and measurement or survey of it, and the evidence showed sufficient reasons for a non-compliance with the conditions, it would not necessarily amount to a forfeiture; and that where, as in that case, it was the duty of the governor of the department to submit the grant to the approval of the departmental assembly, his failure or neglect to do so was a sufficient reason for confirmation of the grant, as *an immediate interest passed by the grant from the governor*. Remembering that the law of Mexico was substantially, if not exactly the same, as that which prevailed in the Spanish colonies before her independence was declared, it is not difficult to believe that had so liberal a rule been applied by the court in its consideration of the grant made to the Baron de Bastrop, and to the construction of the conditions it embodied, and the admitted causes of the non-performance of some of them, a very different conclusion would have been arrived at.

In conclusion, the committee desire to say that, on a consideration of all the facts involved in the two grants by the Baron de Carondelet to the Baron de Bastrop and the Marquis de Maison Rouge, which last has been declared by the Supreme Court of the United States *to be identical* with the first as to its legal effect, they are satisfied that they were each valid and translativ^e of the lands included within their respective limits, to the respective grantees and their legal representatives; that if anything had been wanting for their completion and perfection on the part of the government of Spain, had that power continued in possession of Louisiana, it would have been done; and that at the date of the acquisition of the country by the United States those grants were perfect and complete, and therefore within the conditions of the treaty of Spain.

This conclusion is the more readily arrived at from the fact that the memorialists disclaim any wish to disturb any of those occupants who are in possession of any portion of the said grants under purchase from the United States, or other color of title in good faith; expressing their readiness to accept, in lieu of all such portions, scrip which may be located on any lands of the United States subject to private entry. The granting of their prayer will not, therefore, be accompanied by injury to any party who is now in possession of any portion of the lands in good faith; but will rather serve to relieve all such persons from any remaining feeling of solicitude with regard to their titles to the property which they now hold, with the improvements which they may have made thereon.

Your committee, therefore, report a bill for the relief of the memorialists, and recommend its adoption.

It will be seen that the committee have arrived at a conclusion upon the legal merits of these cases, differing from that of a majority of one of the Supreme Court. But so far as the judicial weight of this majority of one is concerned, it seems to be at least neutralized by the opposing opinion of the eminent judge of the District Court of the United States for the district of Louisiana, whose special familiarity with the principles and forms of the civil law gives commanding authority to his decisions under it.

It may be added as a consideration, not indeed bearing upon the strictly legal merits of these cases, but as entitled to be weighed with the other views of equity and policy which may be legitimately addressed to Congress, that if the private titles now asking confirmation are sustained, it will not enrich individuals, but will increase the funds set apart for public and charitable uses under the wills of Mr. Girard and Mr. McDonogh.

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MINORITY REPORT.

MARCH 3, 1859.—Ordered to be printed.

Mr. SANDIDGE, from the Committee on Private Land Claims, submitted the following

VIEWS OF THE MINORITY.

The undersigned, a minority of the Committee on Private Land Claims, not agreeing with the majority in their report upon the memorial referred to said committee, for the confirmation of the land claim in Louisiana, known as the De Bastrop claim, wish to enter their earnest protest against the action of the majority, and the policy proposed to be initiated :

This claim of De Bastrop, for about one million arpents of land, has, on trial, been rejected on its merits by the Supreme Court of the United States, and is but one of a large number similarly situated ready to be pressed upon the attention of Congress, should the lavishness of the government, in giving away the public domain, be extended to cases of this kind as a matter of right.

All things, it is supposed, must have an end ; and, believing there could be no more proper or impartial tribunal for the final settlement of claims against the government, and especially such as that under consideration, we will refrain from entering into its merits or demerits. If this claim had never been considered and passed upon ; or if, in its settlement, the impartial umpirage of the Supreme Court could be called in question, duty would have impelled us to a very different course, and we might have felt ourselves justified even in reviewing, and uniting with the majority in ignoring the decision of the Supreme Court ; but, as this is not the case, we are unwilling to be the first to recommend a policy that, entered on, will open the door for the revival of every claim that may have been adjudicated adversely from the foundation of the government to this time.

JOHN M. SANDIDGE,
A. HARLAN,
C. C. WASHBURN,
W. T. AVERY.

MINORITY REPORT

Presented to the House of Representatives
in the year 1871

Mr. Thompson, from the Committee on Education, submitted the following

VIEWS OF THE MINORITY

The undersigned, a minority of the Committee on Education, in submitting this report, have the honor to acknowledge the many valuable suggestions and criticisms of the majority, and to express their appreciation of the same. They also desire to state that they have endeavored to give effect to the same, in so far as they have been able to do so.

The undersigned, in submitting this report, have the honor to acknowledge the many valuable suggestions and criticisms of the majority, and to express their appreciation of the same. They also desire to state that they have endeavored to give effect to the same, in so far as they have been able to do so.

JOHN M. RAYMOND
J. A. HARRIS
C. O. WASHBURN
W. T. AVERY

ANNA L. MOOR.

[To accompany Bill H. R. No. 928.]

MARCH 3, 1859.—Ordered to be printed.

Mr. PALMER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Anna L. Moor for a pension, have had the same under consideration, and report:

That the petitioner is the widow of Henry Moor; that her said husband at the time of his death was a lieutenant of the United States navy; that he was killed on board of a steamboat whilst going up the Sacramento river, in California, on the 21st day of March, 1853; that, not being under orders at the time of his death, the Commissioner of Pensions has disallowed her claim for a pension; that said petitioner is left without means of support, and has four minor children dependent upon her. The committee find many precedents of relief afforded in such cases by a special act of Congress; they therefore ask leave to bring in a bill, which is herewith submitted.

ANNA E. MOON

REPORTER

REPORT

REPORT OF THE COMMITTEE ON JAVELIN FENCIBLES, MADE BY
THE FOLLOWING

REPORT

The Committee on Javelin Fencing, to which was referred the petition
of Anna E. Moon for a pension, have had the same under consideration
and report:

That the petitioner is the widow of Henry Moon; that her husband
died on the 10th of his death was a lieutenant of the United States
Army; that he was killed on board of a steamboat while going up the
River, in California, on the 10th of March, 1858; that
and before under orders at the time of his death, the Commission of
the Government has disallowed her claim for a pension; that said petition
is for without means of support, and has four minor children dependent
on her. The committee find many precedents of relief afforded
in such cases by a special act of Congress; they therefore ask leave to
bring in a bill, which is herewith submitted.

ASA WELLS.

[To accompany Bill H. R. No. 929.]

MARCH 3, 1859.—Ordered to be printed.

MR. PALMER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Asa Wells, report:

That they have examined the same, and find that the said Asa Wells was a volunteer in the late war with Great Britain; that a part of his service was performed in the transportation of troops to and from different points on Lake Champlain, preparatory to the battle of Plattsburg; on account of adverse winds, and for the purpose of facilitating the transportation, he was compelled to use an oar in propelling the boats; that the weather was cold and stormy, on account of which his hands became partially disabled; that the tendons of his hands are now so contracted that they are of but little use to him. B. P. Anson, Samuel Penn, and William Wells, who are certified to be credible men, make oath, to their knowledge, of the service of Asa Wells, and to his having injured his hands in the service as aforesaid.

Augustus Viele, the post surgeon at Watervliet arsenal, certifies to the present disabled condition of the applicant. The Hon. George W. Palmer, of this committee, also certifies to his disabled condition, and to the belief that the disabilities were contracted in the service.

The committee think the petitioner is entitled to relief at the rate of \$4 per month, to commence on the 2d April, 1858, being the day on which his petition came before the committee. The committee report a bill.

SAMUEL WARD.

[To accompany Bill H. R. No. 930.]

MARCH, 3, 1859.—Ordered to be printed.

Mr. PALMER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Samuel Ward, report:

That the evidence submitted with the petition shows that the applicant suffered an attack of asthma while in the service in 1814; served six months, when, at the expiration of his term of enlistment, he was discharged. The muster-rolls simply speak of him as *present*, making no mention of his disability. Two respectable and reputable physicians swear that he is now laboring under asthma, and is, in consequence thereof, unable to support himself. He is now 77 years of age. The service and sickness, while in the line of his duty, is sworn to by a comrade, and also his present disability in consequence of asthma. The committee are of the opinion that relief should be granted him, and to that end they report a bill.

REAR ADMIRAL WARD

(To accompany H. R. No. 246)

March 11, 1867—Ordered to be printed.

Mr. Lister, from the Committee on Invalid Pensions, reads the following

REPORT

The Committee on Invalid Pensions, to whom were referred the petition of Edward Ward, report:

That the evidence submitted with the petition shows that the applicant suffered no attack of paralysis while in the service in 1815; served six months, when, at the expiration of the term of enlistment, he was discharged. The committee have carefully examined the evidence, and find no mention of his disability. The respectable and reputable physician states that he is now laboring under paralysis, and is, in consequence thereof, unable to support himself. He is now 70 years of age. The service and sickness, while in the line of duty, is shown to be by a certificate, and also his present disability in consequence of service. The committee are of the opinion that relief should be granted him, and so they report a bill.

ANDREW TEMPLETON.

[To accompany Bill H. R. No. 931.]

MARCH 3, 1859.—Ordered to be printed.

Mr. PALMER from the Committee on Invalid Pensions, made the following

REPORT.

The petitioner, Andrew Templeton, enlisted in the army of the United States April 11, 1814, for "during the war," and served till July 22, 1815, when he was honorably discharged. After the battle of Plattsburg, where he served, he was quartered in a tent during the cold, wet, and variable weather, from September till the latter part of December. He then went into barracks newly constructed of green timber, when he took a violent cold which resulted in rheumatism, in consequence of which he was confined to the hospital. That disease, thus contracted, has continued to afflict him ever since, particularly in his leg and hips, rendering him lame and unable to walk except with the aid of canes and crutches, and altogether incapable of laboring except in a sitting posture. It continued to increase upon him until it resulted, many years ago, in his entire disability to earn his subsistence by manual labor. He is, and has always been, a good citizen, of temperate and exemplary habits, is without property, and is now seventy-one years of age.

These facts are abundantly proved by numerous witnesses, some of whom served with petitioner in the army, and others have known him ever since his discharge. Mr. Palmer, representative from New York, certifies that many of said witnesses are personally known to him, and are men of the highest respectability.

Petitioner's memorial was referred to this committee February 8, 1858. Your committee are of opinion that a pension of eight dollars per month should be granted to the petitioner, commencing February 8, 1858, and report a bill accordingly.

ELIZA M. EVANS, HEIR OF ANTHONY WALTON WHITE.

[To accompany Bill H. R. No. 932.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CLAWSON, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the memorial of Eliza M. Evans, only child and heir-at-law of Colonel Anthony Walton White, a colonel in the revolutionary army, beg leave to report:

That they have examined the claim of Mrs. Evans, and adopt the report of the committee made at the 1st session 32d Congress.

IN SENATE, April 7, 1852.

The Committee on Revolutionary Claims, to whom was referred the petition of Mrs. Eliza M. Evans, only child and heir of Colonel Anthony W. White, deceased, late a colonel in the revolutionary army, have had the case under consideration, and now report:

They find the said Anthony W. White to have served in the revolutionary army, with the rank of colonel; that prior to the year 1783 he advanced to the United States, for the support of his regiment, the sum of \$3,750; that from 1788 down to the year 1838 either the said White or his legal representatives made continual efforts to obtain a settlement of his accounts and a repayment of the loan; and that, during this time, both the Secretary of War and the committees of Congress uniformly reported in favor of the justice of the claim; that finally, on the 7th July, 1838, an act was approved to refund to the legal representatives of said White the sum aforesaid.

The claim now under consideration is for the interest upon this sum of \$3,750 from the 4th of July, 1780, to the 7th of July, 1838. Taking into consideration the facts that the claim grows out of an advance of money actually made to the government at a most critical period of its history, and that no delay or laches are found in the prosecution of the claim, the committee cannot withhold the recommendation that the claim be allowed. They therefore report a bill directing the payment of interest at six per cent. upon the sum of \$3,750 from the 4th of July, 1787, to the 7th July, 1838.

IN THE HOUSE OF REPRESENTATIVES, *January 9, 1838.*

Mr. MUHLENBERG, from the Committee on Revolutionary Claims, made the following report:

The Committee on Revolutionary Claims, to whom was referred the petition of Margaret White, widow of Colonel Anthony Walton White, report:

This case has been repeatedly examined, and favorable reports made thereon by different committees appointed on revolutionary claims, accompanied by bills of relief. It has again been re-examined, and a former report, detailing the facts of the case, and giving a part of the evidence, has been concurred in, adopted, and annexed to this, with a bill for the relief of the petitioner.

At the second session of the last Congress a bill for the relief of Mrs. White passed through a Committee of the Whole House, after a full debate, but was arrested on the question of engrossment, under the suggestion that Colonel White might not have settled with the State of Virginia, and that the United States might, in such a case, become liable to that State. In consequence, at the request of the committee, the bill was postponed that time might be had to consult the authorities of Virginia on the subject. A reply to the inquiries made was not received until it had become too late to act again on the bill during that session.

The information obtained from Virginia and other sources, in the opinion of the committee, clearly establishes the fact that Colonel White had settlements both with Virginia and the United States—with the former on the 30th day of January, 1787, and with the latter on the 12th of March, 1788, and 6th of March, 1789; in all of which settlements balances were found, *not against him but due to him*, and that these balances were paid in final settlement certificates.

It is well known that Virginia did not issue final settlement certificates as long as a balance appeared against a claimant. It is equally well known that the United States acted on the same principle, and even withheld pensions until it was clearly shown that there was no balance due from the claimant to the United States.—(Vide resolve of July 12, 1787.) It is also known that the United States issued no commutation certificates until the accounts of officers were adjusted, and a *certainty* existed that there was no balance due them from the officer. Yet Colonel White received a final settlement certificate from Virginia, as certified by the auditor of that State; from the United States, as stated by Mr. Hagner, Third Auditor of the Treasury; and commutation certificates, as appears from the records of the War Department. How, under such circumstances, can it be supposed that his accounts were unsettled, and a balance existing against him?

That the \$150,000, continental paper money, the value of which, according to the scale of depreciation then established, was \$3,750, and now claimed was never paid, appears distinctly from an *original* paper signed by John Pendleton, auditor of Virginia, dated January

30, 1787, showing a settlement of Colonel White's *paper-money* account with Virginia, and containing a list of four receipts disallowed, and the reasons for their disallowance; among them, the identical charge of money advanced to Captain Belfield, and for which the present claim is made. This paper, in connexion with the explanatory certificate of Mr. Auditor Heath, (a copy of which as well as of the paper itself is hereto annexed,) conclusively proves that all the accounts of Colonel White with Virginia were settled at that time, as it expressly speaks of the *paper-money* account, and bears the same date as the final settlement certificate granted by Virginia to Colonel White for the balance of his pay, and which was forwarded by the auditor of that State to the committee.

Upon reviewing the whole case and all the testimony for and against, the committee are fully convinced that the claim is well founded; and trust that, after the many unfortunate and accidental delays which it has sustained, justice will at length be accorded to the widow of a most meritorious officer who has strong claims upon the government, not only for justice, but the most distinguished generosity. She asks only for strict justice.

Her own large fortune and that of her husband, (one of the most wealthy men of the country at the commencement of the revolution—their conjoint estates being a princely fortune,) was all absorbed in the vicissitudes of the revolutionary struggle, and in the scarcely equalled patriotism of her husband in the day and hour of his country's need. He descended in poverty to an untimely grave, writhing under a sense of national injustice; whilst she, bending to the earth under a weight of four-score years, is lingering out existence dependent on the exertions of an only and widowed daughter, who supports herself, her own orphan children, and her aged mother, by teaching an academy: and all this whilst the government, rich beyond the example of nations, is actually withholding money which the husband and father advanced to feed and clothe the naked and starving soldiers of his country—soldiers whom he commanded and often led, with unsurpassed bravery, to battle and to victory.

The aged widow still prays and hopes for justice, and speedy justice, from her country. Shall her hopes be again disappointed, and the feeble tenure upon which she holds life be broken by the shock?

Copy of the original certificate of John Pendleton, Auditor of Virginia.

AUDITOR'S OFFICE, *January* 30, 1787.

Receipts disallowed in the settlement of Lieutenant Colonel White's paper-money account:

	Paper pounds.
John Belfield, dated July 4, 1780.....	£45,000
James Gunn, dated June 26, 1780.....	6,900
John Watts, dated March 7, 1781.....	4,134
Alexander St. Clair, account.....	357

The auditor cannot admit these debits until it appears the money was actually expended in the public service ; whenever that fact is ascertained, those sums will be allowed and reduced agreeably to law.

JOHN PENDLETON.

[The receipts of James Gunn and John Watts, as above, disallowed by the auditor of Virginia, were allowed in his settlement with the United States.]

Certificate of James E. Heath, present Auditor of Virginia, as to the identity of Mr. Pendleton's certificate, and as to Colonel White's settlement with Virginia.

AUDITOR'S OFFICE,
Virginia, June 2, 1837.

The agent for the heirs of Colonel Anthony W. White has shown to me an original paper, dated 30th January, 1787, which I know to be in the handwriting of John Pendleton, at that time auditor of public accounts of this Commonwealth ; by which paper it appears that a settlement had been made of the "*paper-money account*" of Colonel White, in which description of account I presume would be included the within-mentioned charge of \$150,000, that sum having been advanced to Colonel White on the 7th September, 1781, as appears from a copy of his receipt to Foster Webb, attested by said Webb, and as the charge of the same was made on the books of the Commonwealth against Colonel White several months anterior to the date of Mr. Pendleton's original paper showing that Colonel White's "*paper-money account*" had been settled. On the day of this settlement, to wit: the 30th January, 1787, a certificate issued to Colonel White for the balance of his full pay, (or depreciation,) and I should presume that that certificate would not have issued if Colonel White had been in arrears to the Commonwealth. It appears, moreover, that this item of \$150,000 is credited to the Commonwealth in an account made out by Mr. Pierce,* and bearing the marks of antiquity, which has also been shown to me by the agent of Colonel White's heirs. Upon the whole, I think there is strong reason to believe that the sum of \$150,000, within charged, must have been embraced in the settlement referred to in the paper signed by Mr. Pendleton. It is probable that the book containing that settlement, and the vouchers connected therewith, may have been delivered to the commissioners who adjusted the accounts between the United States and the several States, though of that I cannot, of course, speak with confidence. There are many such balances standing on the account-books of this office, which we take to be more *nominal* than real.

JAMES E. HEATH,
Auditor of Virginia.

* The United States commissioner for settling the accounts of officers of the revolutionary army, and for issuing final settlement certificates. This officer prepared Colonel White's accounts for settlement with Virginia.

Certificate of the Auditor of Virginia that a final settlement certificate was granted to Colonel White on the 30th January, 1787, the same day that Mr. Pendleton certifies that he had settled his paper-money account.

This is to certify that it appears, from a list in this office of such officers and soldiers of the Virginia continental line, during the revolutionary war, as settled their accounts, and received certificates for the balance of their full pay, according to an act of assembly passed the November session, 1781, that a certificate issued on the thirtieth day of January, 1787, in the name of Anthony W. White, as lieutenant colonel of cavalry, for £597 16s. 1d.; which certificate appears to have been delivered to himself, and was given for services prior to the 1st January, 1782, to wit: from the 1st August, 1780, to the 31st December, 1781.

Given under my hand at the auditor's office, Richmond, this 7th day of January, 1837.

[No seal of office.]

JAMES E. HEATH,
Auditor of Virginia.

Copy of the resolve of Congress of July 12, 1787.

On the report of the Board of Treasury it was—

Resolved, That all officers of the line of the late army who may be entitled to pensions, in pursuance of the acts of Congress in that behalf made, shall, previous to the receipt of such pension, deposit with the proper officer appointed to discharge the same, in the State in which they reside, a certificate from the commissioner of army accounts, purporting that no balance is due from the claimant to the United States.

[It was after the adoption of this resolution (*i. e.*, on the 12th March, 1788, and 6th March, 1789,) that Colonel White received his final settlement certificates and commutation certificates from the United States.]

JANUARY 14, 1836.

The Committee on Revolutionary Claims, to whom was referred the petition of Margaret White, widow of Colonel Anthony Walton White, report:

That this case was examined, and a favorable report made thereon, accompanied by a bill for the relief of the petitioner, at the second session of the last Congress. The committee, on a re-examination, adopt the former report, and annex it to this. The bill which, owing to the pressure of other and prior business, could not receive the action of the House, is again reported.

JANUARY 15, 1835.

The Committee on Revolutionary Claims, to whom was referred the petition of Margaret White, widow of Colonel Anthony Walton White, report :

That Anthony Walton White, colonel of the first regiment of light dragoons, in the revolutionary war, presented his petition in March, 1790, to the first Congress assembled under the present Constitution, praying for the reimbursement of \$150,000 advanced by him on the 4th of July, 1780, for the use of his regiment; the value of which sum, according to the scale of depreciation then established, was \$3,750.

In the petition of 1790 Colonel White states that, on taking command of the cavalry in the south, he found all the quartermasters, foragemasters, and commissaries of that department, either captured, or destitute of resources for procuring the necessary supplies of provision and forage; which articles could only be obtained on the credit of himself and friends, or by plunder and the sword; and that a resort to the latter means being prohibited by both policy and humanity, he was obliged to raise on private loan \$150,000, which he deposited in the hands of John Belfield, then a captain and paymaster in his regiment, for the use and benefit of his regiment; that the whole of said sum was in fact applied solely to that purpose, and the vouchers taken therefor placed by Belfield in the hands of staff officers for safe-keeping; but that the memorandum showing the names of the officers with whom they were deposited had been lost by Belfield, so that the petitioner was left without the means of obtaining and exhibiting the vouchers which would show the particular application of the money. He states that, in 1788, he petitioned Congress for redress, but that body was dissolved before his case was finally acted on, and he prays to be reimbursed the money advanced. This petition appears to have been referred, with others, to the Secretary of War, who recommended the passage of a law authorizing the claims to be settled on equitable principles, and on the best evidence the nature of the case might admit. In May, 1792, a bill with this object passed the House, but was postponed in the Senate, in which body similar bills were introduced in 1793 and 1796, but not finally acted on. Since the death of Colonel White, his widow has presented two petitions, in the last of which she sets up an additional claim for the value of seven loan office certificates, of \$1,000 each, (the numbers of which are stated,) issued to Colonel White from the South Carolina loan office, and alleged to have been lost.

In support of the allegations of Colonel White's petition, the committee find in the papers the following testimony :

1st. The [original] receipt of Captain Belfield, dated July 4, 1780, for \$150,000, placed in his hands for the use of the regiment, to be paid to them as he may please.

2d. The [original] certificate of Captain Belfield, dated the 2d of February, 1787, stating that the money had been applied exclusively to the use of the regiment, and accounted for by him to some of the staff; and that when the money was deposited with him by Colonel White, the regiment was in want, and distressed for many necessities.

3d. The [original] certificate of Jonathan Burrall, commissioner for settling the accounts of the commissary and quartermaster's departments, dated September 2, 1788, stating that no charge appeared on the books of his office against John Belfield, captain and paymaster, by any commissary or quartermaster, for any disbursements by him for supplies to said regiment; but that few of the accounts of quartermasters in the southern department had yet been rendered, and that, if any such charge should thereafter appear while he continued in office, they would be noticed and stoppages made. He continued in office at least as late as until May, 1789.

4th. The [original] affidavit of Colonel White himself, dated September 15, 1788, in which he verifies on oath the material facts that have been stated.

The petitioner also refers to the distressed situation of the southern army, then, and now, notorious; and it is impossible not to take into consideration the general pecuniary embarrassments of the country and its government; in consequence of which, in numerous instances, the support of the common cause was left to rest upon the advances and sacrifices to be made by individuals. These considerations do not, it is true, furnish of themselves any evidence to establish the fact of an advance in a particular instance, but they may be, and in this instance are, strongly corroborative of more direct testimony on the subject.

It is deemed proper, also, to refer to the following resolution of June the 19th, 1780, relating to this particular regiment, as showing at once the anxiety and the inability of Congress to provide for its proper equipment:

"*Resolved*, That it be earnestly recommended to the States of Virginia and North Carolina to use their utmost exertions to recruit, remount, and equip, Baylor's and White's regiments of light dragoons, so as to complete them at least 150 rank and file in each regiment."*

* As further illustrative of the anxiety with which the proper equipment of Colonel White's regiment was viewed, when the British army was making such fearful progress through the southern States, and also as showing the desperate state of the public finances at the very period when Colonel White so patriotically raised, upon his own private credit, and advanced for the support and equipment of his regiment, the money which forms the subject of the present claim, it is deemed proper to add the following resolution of the general assembly of Virginia, dated July 14, 1780. By this resolution it will be perceived that Virginia, at the very time of Colonel White's advance of his own money for the support of his regiment, was unable to pay, even in depreciated paper money, for a single horse, but had to rely upon a purchase on credit:

"IN THE HOUSE OF DELEGATES, July 14, 1780.

"*Resolved*, That the governor and council be desired to appoint one or more purchasers, in such counties as they may think proper, to procure horses to remount the dragoons in Colonels White and Washington's corps, upon the best terms they can, granting certificates for the value of the horses so purchased; which certificates the general assembly will, at their next session, make provision for the speedy payment of to the respective holders, together with an interest thereupon of *five per centum* from the time of purchase: *Provided*, That such purchases shall not exceed the number of three hundred horses, including those now belonging to the said corps, and those which may have been already purchased under any former resolution of assembly.

"A copy. Teste:

"Agreed to by the Senate:

"JOHN BECKLEY, C. H. D.

"WILLIAM DREW, C. S."

The committee are satisfied that Colonel White did, on the 4th day of July, advance to the paymaster of his regiment, and for its use, \$150,000, of the value of \$3,750 ; that the circumstances of the regiment were such as to call for this advance on his part, and render it proper ; and that the money so advanced was, in fact, disbursed for the use of the regiment. The liability of the United States for the repayment of the sum so advanced and disbursed they consider unquestionable ; and on the principles of the resolution of the 3d of June, 1784, which directs that an interest of six per cent. per annum shall be allowed to all creditors of the United States, for supplies furnished or services done, from the time that the payment became due, as well as upon the grounds of common justice, they think interest should be allowed upon the sum advanced from the time it was placed in the hands of Belfield for the use of the regiment. But while it does not appear that there has been any failure of diligence in the presentation of this claim, by which any right of the claimant should be forfeited, no reason is perceived for placing it now upon better grounds than it would have occupied if it had been originally allowed, and the amount subscribed in the public funds, under the act of August, 1790. A bill is therefore reported for the payment of \$3,750, (the value of the sum advanced by Colonel White,) with interest, according to the provisions of the said act of August, 1790, to be computed from the 4th day of July, 1780.

With respect to the loan office certificates, alleged to have been lost, the certificate of the Register of the Treasury, dated the 31st day of January, 1834, shows that the certificates described in the petition of Mrs. White, and also in the foregoing part of this report, are outstanding and unpaid, and, together with the great lapse of time, creates that strong presumption of their loss, on the ground of which Congress has, in numerous cases, directed payment to be made of their value. A provision is therefore inserted in the bill for the payment of \$175, the value of said loan office certificates, with interest thereon, at the rate of six per cent. per annum ; that being the usual rate allowed in such cases.

Appended to this report.

- 1st. The original petition of Colonel White.
- 2d. The original receipt of John Belfield, dated July 4, 1780.
- 3d. The original certificate of John Belfield, dated February 2, 1787.
- 4th. The original certificate of Jonathan Burrall, dated September 2, 1788.
- 5th. The certificate of Michael Nourse, marked A.
- 6th. The original affidavit of Colonel White, dated September 15, 1788.
- 7th. The certificate of T. L. Smith, marked B.
- 8th. The certificate of T. L. Smith, marked C.

No. 1.

To the Speaker and House of Representatives of the United States :

The memorial of Anthony W. White, late colonel of the first regiment of dragoons, in the service of the United States, most respectfully sheweth :

That your memorialist, on taking the command of the cavalry of the late army in the southern department, found all the quartermasters, foragemasters, and commissaries of the said department, either captured by the British army in Charleston, or destitute of resources to render your memorialist any assistance in procuring supplies of provisions and forage, &c., for the use of the men and horses under his command, which very necessary articles could only be obtained upon the credit of your memorialist and his friends, or by plunder and the sword ; that humanity and policy forbade him to add so great a calamity to the unprotected and unfortunate inhabitants of the country, and therefore obliged your memorialist, during that period of general confusion and distress, to raise, on private loan, one hundred and fifty thousand dollars, for the purpose of procuring the articles necessary for the support and comfort of the troops committed to his care ; that your memorialist deposited the money so obtained in the hands of Major John Belfield, then a captain and paymaster of his regiment, as will appear by his receipt to your memorialist, which money was actually laid out for the use and benefit of the said men and horses, and no part of it applied for any private purpose whatsoever, which will also appear by the said paymaster's certificate ; that the said paymaster placed the vouchers for the expenditures of the said one hundred and fifty thousand dollars in the hands of staff officers, as he met with them, conceiving that they would be safer with their baggage, in the rear of an army, than with light troops generally on the lines ; that the said paymaster made a memorandum of the several quartermasters and commissaries' names he put said vouchers in the hands of, but unfortunately had mislaid the same, which leaves your memorialist destitute of relief, unless he obtains it from the justice of his country, as the said paymaster took charge of the said one hundred and fifty thousand dollars, not in his official line, but to oblige your memorialist, and to render, at the same time, a service to his suffering brother soldiers ; that to prevent the vouchers for the expenditures of the said one hundred and fifty thousand dollars (if not previously paid) being hereafter presented and paid, your memorialist did obtain from Mr. Jonathan Burrall, commissioner for the quartermaster and commissary's department, a certificate, setting forth that no charge in that office appeared against the said paymaster ; that no charge has been made by any commissary or quartermaster for any payments made to him, or for any disbursements by him for supplies to the cavalry ; and that if any appeared hereafter, in any of their accounts, it should be noticed, and stoppages made ; that your memorialist applied to the Congress of 1788 for redress, believing that the receipt and certificate of Major Belfield, whose integrity and honesty are well known to some of your members from the State of Virginia, would be

thought equal, if not superior, to the vouchers for the expenditures of the said one hundred and fifty thousand dollars, and that Mr. Burrall's certificate would clear up any doubts of the said vouchers having been already paid, or the possibility of their being hereafter paid to any person but your memorialist; that the Congress of 1788 committed your memorialist's claim to three of their members, to be investigated, but broke up before their committee reported on the same, which obliges your memorialist to present his claim again to Congress. Your memorialist doubts not that many of the facts stated in this memorial have come within the knowledge of some of the members of Congress from the southern States, and that all are but too well acquainted with the wretched situation of the American troops at the southward during the year 1780. Your memorialist therefore prays, as he advanced his money to prevent the *citizen from plunder* and the *soldier from want*, that you will please to consider his claim, and render him that justice he may be found to merit.

ANTHONY W. WHITE.

No. 2.

Original receipt of Captain Belfield.

HALIFAX, July 4, 1780.

Received of Colonel Anthony W. White one hundred and fifty thousand dollars, for the use of his regiment, to be paid to them as he may please to direct.

J. BELFIELD,
Captain and Paymaster.

No. 3.

Original certificate of Captain Belfield that the money was expended for the regiment.

RICHMOND, February 2, 1787.

I do certify that the one hundred and fifty thousand dollars put in my hands by Colonel White, and for which I gave my receipt, July 4, 1780, was applied to the use of his regiment, and accounted for by me to some of the staff departments. I further declare that no part of it was ever applied or made use of for him, or for any other private purposes whatever; and that the regiment was in want and distressed for many necessaries when Colonel White put the above-mentioned sum in my hands.

J. BELFIELD,
Captain and Paymaster.

No. 4.

Certificate of Mr. Burrall that no other person had obtained credit for the money.

OFFICE OF ACCOUNTS FOR COM'Y & Q. M. DEP'T,
New York, September 2, 1788.

I certify that no charge appears against John Belfield, late a captain and paymaster of the 1st regiment of light dragoons, commanded by Colonel Anthony W. White, in the books of this office; neither has any charge been made by any commissary or quartermaster for any payments made to him, or for any disbursements by him, for supplies to said regiment. I must, however, observe, that very few of the accounts of the quartermasters in the southern department are yet rendered; but should any such charge hereafter appear in any of their accounts while I am in office, it will be noticed, and stoppages made.

JON. BURRALL,
Commissioner.

No. 5.

(A.)

TREASURY DEPARTMENT,
Register's Office, January 22, 1834.

SIR: It appears from the records of accounts settled under the old government that "Jonathan Burrall, esq., late commissioner for settling the accounts of the quartermaster and commissary departments," received his salary to "8th May, 1789, inclusive." I presume, therefore, that he ceased to act as commissioner aforesaid on that day. Our records afford no other information on the subject.

Very respectfully,

MICHAEL NOURSE.

No. 6.

Original affidavit of Colonel White.

STATE OF NEW YORK, ss.

Anthony W. White, of the city of New York, maketh oath and saith: That on the 4th day of July, in the year of our Lord one thousand seven hundred and eighty, he, this deponent, placed in the hands of Captain John Belfield, the then paymaster of his regiment, the sum of one hundred and fifty thousand dollars, to be disposed of to and for the use of the said regiment; and at the same time this deponent did direct and require the said John Belfield to take all the receipts for the several sums to be by him expended in the manner following, to wit: "Received of Captain John Belfield, of the 1st

regiment of light dragoons, the sum of £——, in full for provision, forage, &c., sold and furnished by me for the use of the said regiment. A. B." And this deponent doth further depose and say, that the said John Belfield did frequently afterwards show unto this deponent receipts by him taken from divers persons who had supplied the said regiment with necessaries; and this deponent verily believes that he hath seen receipts, written in the manner aforesaid, for the whole of the moneys so as aforesaid delivered by this deponent to the said John Belfield, which was expended to and for the use of the said regiment. And this deponent further doth depose and say, that he was informed by the said John Belfield that he, Belfield, had lodged the said receipts in the hands of the proper officers of the several staff departments, whenever he met with them, in order that they might be preserved for the satisfaction of this deponent, to whom alone they could be of any use; and for the greater security, the said John Belfield informed this deponent that he had made a minute of the names of the several persons in whose hands he had deposited the said receipts, which he had unfortunately lost, with several other papers, while on command at the southward. And this deponent doth further depose and say, that the said John Belfield hath given him, this deponent, the fullest satisfaction that the whole of the said one hundred and fifty thousand dollars was actually and *bona fide* laid out and expended to and for the use of the said regiment in purchasing and procuring the necessary supplies of provision and forage for the men and horses of the said regiment. And this deponent doth further depose and say, that he did conceive and believe that the receipt of the said John Belfield for the said one hundred and fifty thousand dollars would have been a sufficient voucher for him, this deponent, to have produced, in order to entitle him to full compensation therefor; more especially as the motive which actuated him was generally known to be that of humanity, and a sincere desire to relieve, as much as in his power, the actual distresses of the troops committed to his care. And this deponent further doth depose and say, that no part of the said one hundred and fifty thousand dollars was ever applied by the said John Belfield, or by any other person, for any private purpose whatever, other than is hereinbefore particularly set forth, to the best of this deponent's knowledge and belief. And this deponent doth further depose and say, that he, this deponent, hath never received any of the said receipts from Captain Belfield, or from any other person, nor doth he know where to apply for the same; many of the persons to whom they were given by the said John Belfield, as aforesaid, being in all probability dead, or removed to a great distance, and out of the reach and knowledge of this deponent. And this deponent doth further depose and say, that he hath never received any payment of the said one hundred and fifty thousand dollars, or any part thereof, from the said Captain John Belfield, or from any other person whatever, or any security therefor.

And further this deponent saith not.

ANTHONY W. WHITE.

Sworn this 15th day of September, 1788, before me.

W. POPHAM, *Notary Public.*

No. 7.

(B.)

TREASURY DEPARTMENT,
Register's Office, February 5, 1834.

SIR: In compliance with your request of the 3d instant, I have the honor to state that, in conformity with the resolution of Congress of the 28th June, 1780, "continental paper money" was, on the 4th of July, 1780, received on loan at \$40 for one, and that accounts for money advanced on that day, and some time subsequently, were settled at the treasury at that rate.

I have the honor to be, sir, your obedient servant,

T. L. SMITH, *Register.*

Hon. EBENEZER YOUNG.

No. 8.

(C.)

TREASURY DEPARTMENT,
Register's Office, January 31, 1834.

I certify that the following certificates, issued at the loan office in South Carolina, are outstanding and unpaid, viz:

No.	Date.	To whom issued.	Amount.	
			Nominal.	Specie value.
4388	June 10, 1780.....	Col. Anthony Walton White.....	\$1,000	\$25 00
4396	-----do-----	-----do-----	1,000	25 00
4493	-----do-----	-----do-----	1,000	25 00
4494	-----do-----	-----do-----	1,000	25 00
4498	-----do-----	-----do-----	1,000	25 00
4520	-----do-----	-----do-----	1,000	25 00
4560	-----do-----	-----do-----	1,000	25 00
			7,000	175 00

T. L. SMITH, *Register.*

HEIRS OF LIEUTENANT FRANCIS MARTIN.

[To accompany Bill H. R. No. 933.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CLAWSON, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims to whom was referred the petition of the heirs of Lieutenant Francis Martin, having had the same under consideration, report:

That Francis Martin, as appears by a certificate from the secretary of State of New York, was appointed a lieutenant in Colonel Livingston's regiment of Canadians, in the continental service, on the 18th of December, 1776, and omitted in December, 1778. In April, 1777, he was sent by order of General Schuyler into Canada, where he was made a prisoner. The following is a translation:

“ Order of General Schuyler.

“ ALBANY, 24th April, 1777.

“ The following is the manner in which you shall conduct your scout in Canada with Captain Baptist Allen. May God guard you in this perilous journey; you will start to-morrow. I write by order of Hon. Major General Schuyler to Brigadier General Bailey, at Cohos, that he may give you all possible assistance; and you may believe your family will be under my care in your absence; and if any ill luck shall happen you in this dangerous journey that you are doing for the common cause, a like compensation will be allowed your wife as yourself. With this assurance be encouraged; and here is twenty-four dollars which the Major General gives you to get yourself refreshments with on the road. Farewell Mr. Martin, good journey.

“ JH. HURLTES, Aid-de-Camp.

“ Lieut. F. MARTIN.”

It appears from other testimony in the case, that on this expedition he was made a prisoner at Berthier, in Canada; his commission taken from him and burnt in the presence of a public assemblage, before the

church door, and his life spared on conditions that he immediately depart the Province; and that from exposures he contracted while on this journey, he died in the service in the government hospital, at Fishkill, in the State of New York, in December, A. D. 1780, leaving a widow and several children. It further appears that his widow, whose maiden name was Genevieve Boucher, within eighteen months after the death of Lieut. Martin, intermarried with Felix Victor, a Canadian officer in General Hazen's regiment, and that she died the 18th of December, 1836.

This claim is made for seven years half-pay under the following resolve of Congress:

“Resolution. In Congress, August 24, 1780.”

“Resolved, That the resolution of the 15th day of May, 1778, granting half-pay for seven years to the officers of the army who should continue in service to the end of the war, be extended to the widows of those officers who have died, or shall hereafter die in the service, to commence from the time of such officer's death and continue for the term of seven years; or if there be no widow, or in case of her death or intermarriage, the said half-pay be given to the orphan children of the officer dying as aforesaid, if he shall have left any, and that it be recommended to the legislatures of the respective states to which said officer belonged to make provisions for paying the same on account of the United States.”

This claim was presented to the Senate in the 33d Congress, on petition, and referred to the Committee on Revolutionary Claims, a favorable report and bill brought in, and recommitted. The claim was erroneously made for commutation, but was classed in the report in the second class among those entitled to half-pay. Upon the establishing of the Court of Claims by Congress, the claim was there presented and prosecuted under the foregoing resolve of Congress.

The Court of Claims decided the claim was barred by certain acts and resolves, called statutes of limitations; and the adverse report of the Court of Claims, No. 139, on the private calendar of the House, was taken up in Committee of the Whole, on the 16th day of April, 1858, and concurred in, in the absence of the member who had it in charge, and was intending to move its reference to an appropriate committee of this House;

Your committee considering the manner in which the case was disposed of, with the evidence before them, that the claim is a just and meritorious one, and which has not been satisfied, and that Congress has uniformly overlooked these acts of limitations and passed claims of the same character, and that there are now on the calendar reported by your committees cases like the present, they have agreed to report a bill for the seven years half-pay, and recommend its passage.

The Court of Claims submit the following report:

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of *Ellen Martin vs. The United States*:

1. The petition of the claimant.
2. Certificate of heirship of claimants, transmitted to House of Representatives.
3. Opinion of the court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the
[L. s.] seal of said court at Washington, this 7th day of December,
A. D. 1857.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable Judges of the Court of Claims of the United States:

The petition of Ellen Martin, (wife of John Levake,) of La Cole, in the county of Huntington, in Canada East, one of the grandchildren and heirs-at-law of Francis Martin, deceased, begs leave respectfully to represent unto this honorable court that she is interested, as one of the grandchildren of the said Francis Martin, in a claim which the said Francis Martin had against the United States for services in the revolutionary war.

That her interest in said claim arises from the consideration that she is one of the grandchildren and heirs-at-law, with others of kin, of the said Francis Martin, who died intestate on or about the _____ day of December, A. D. 1780, and in consideration of certain resolves of Congress hereinafter named.

And your petitioner further represents unto this honorable court, that the said Francis Martin was commissioned by Congress a lieutenant in the continental service in the revolutionary war, and served as such officer until his death as aforesaid; that by a resolution of Congress of the 24th day of August, 1780, it was provided that the resolution of the 15th of May, 1778, granting half-pay for seven years to the officers of the army who should continue in service to the end of the war, be extended to the widows of those officers who have died, or should thereafter die, in the service, to commence from the time of such officer's death and continue for the term of seven years; or if there should be no widow, or in case of her death or intermarriage, the said half-pay should be given to the orphan children of the officer so dying as aforesaid, if he should have left any, &c. And your petitioner avers that the said Francis Martin died, when in the service, before the end of the war, and at the time above stated, leaving a wife and children him surviving, but who are now dead, leaving issue.

And your petitioner further shows to this court, that the seven years half-pay provided for in the foregoing resolution has never been paid, but remains as a debt or claim due to the estate or representatives of the said officer from the United States.

And your petitioner further states and avers, that she presented her claim to Congress in 1854 for the commutation pay, which was referred to the Senate's Committee on Revolutionary Claims, who reported a bill; No. of report, 82, bill 186, 33d Congress, and recommitted January 5, 1855. All which proceedings she asks to be filed in this court as a part of the case.

Your petitioner therefore prays that this honorable court will examine into the justice and equity of the said claim, and report a bill to Congress providing for the payment thereof, together with the interest thereon, unto the heirs or legal representatives of the said officer; or such other order or bill as to your honors shall seem fit and proper to report in the premises.

And your petitioner, as in duty bound, will ever pray.

C. K. AVERILL,
Attorney for Claimants.

Dated February 25, A. D. 1856.

STATE OF NEW YORK, }
County of Clinton, } ss.

Calvin K. Averill, of Rouse's Point, in the county of Clinton, in the State of New York, being duly sworn, doth depose and say: That the petition above by him subscribed contains the truth, according to the best of his information and belief.

C. K. AVERILL.

Sworn and subscribed before me, this 25th day of February, A. D. 1856.

M. VANDERVORT,
Justice of the Peace.

COURT OF CLAIMS, *December 13, 1856.*

Amended petition sworn to before me.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

STATE OF NEW YORK, }
County of Clinton, } ss.

I, Perry G. Ellsworth, judge of Clinton county courts and surrogate, do hereby certify that satisfactory evidence was presented to me at my office, in open court, of the fact that Lieutenant Francis Martin, of Colonel Livingston's regiment in the revolutionary war, died in service in hospital at Fishkill, in December, A. D. 1780; that his widow died the 18th day of December, A. D. 1836, and they had the

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following children, grandchildren, and descendants, their heirs-at-law, viz :

- I. Francis Martin, who died without heirs.
- II. Joseph Martin, who is dead, and left the following children and descendants his heirs-at-law :
 1. Joseph Martin, who is dead, and left one child, Josette.
 2. Basil Martin.
 3. Alexey, who is dead, and left the following children, viz: 1. James; 2. Alexander; 3. Fulgence; 4. Virgine; 5. Jane; 6. Adaline.
 4. Warsis, who is dead, and left the following children, viz: Stephen Nelson, Joseph, Caroline.
 5. Catharine, who married Joseph Fayan.
 6. Julia, who married Baptiste Pelo.
 7. Ellen, who married John Levake.
- III. Alexis, died young.
- IV. A boy, died before he was christened.
- V. Frances, who married Anve Morgette, supposed dead.
- VI. Margaret, died young.
- VII. Mary Ann, died young.
- VIII. Catharine, died young.
- IX. Ganerieu, who married Louis Valois, who is dead, and left no children, as known.
- X. Angelica, who died young.

In testimony whereof I have hereunto set my hand and affixed my seal, this twenty-fifth day of November, A. D. 1856, at the [L. s.] surrogate's office in Plattsburg.

P. G. ELLSWORTH, *Surrogate*.

ELLEN MARTIN *vs* THE UNITED STATES.

Chief Justice GILCHRIST delivered the opinion of the court.

The petitioner, who is now the wife of John Levake, represents that she is one of the grandchildren of Francis Martin, who died intestate in the month of December, 1780; that the said Martin was a lieutenant in the war of the revolution, and served in that capacity until his death; that by a resolution of Congress of August 24, 1780, it was provided that the resolution of May 15, 1778, granting half-pay for seven years to the officers of the army who should continue in service to the end of the war, be extended to the widows of those officers who have died, or should thereafter die in the service, to commence from the time of such officer's death and continue for the term of seven years; or if there should be no widow, or in case of her death or intermarriage, the said half-pay should be given to the orphan children of the officer so dying as aforesaid, if he should have left any, &c.

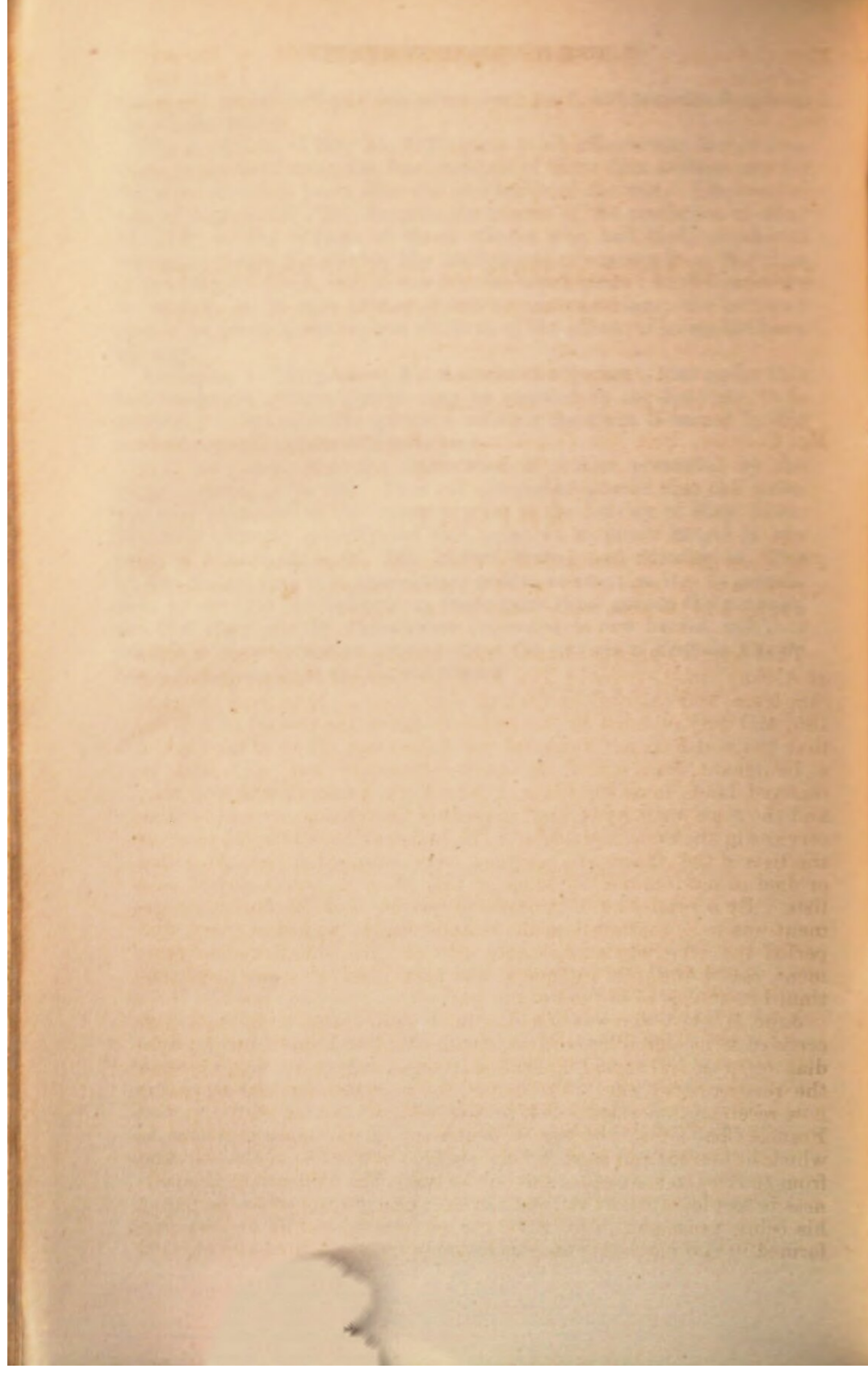
The claimant avers that Martin died in the service before the end of the war, and at the time above stated, leaving a wife and children surviving, but who are now dead, leaving issue. She also alleges that

the seven years' half-pay has never been paid, but remains due from the United States.

The resolution of May 15, 1778, gives to all officers who should continue in service during the war one-half of their then present pay for the term of seven years after the conclusion of the war. The resolution of August 24, 1780, extends the benefit of the resolution of May 15, 1778, to the widows of those officers who had died, or should thereafter die in the service, the half-pay to commence from the time of the officer's death, and to continue for seven years; or if there were no widow, or in case of her death or intermarriage, the half-pay should be given to the orphan children of the officer, if he should have left any.

Assuming for the present, for the sake of argument, that under this last resolution grandchildren may be entitled to the half-pay, it is necessary to examine the question whether the claim is barred by the resolutions and statute of limitations.

It is very clear that the claim, even if it were presented by the proper person, is barred. It is not alleged or proved that the claim was ever presented at the treasury prior to the 1st day of May, 1794. We have recently investigated this point at so much length in the cases of *Chamberlain vs. The United States*, and *Marnay vs. The United States*, that it is unnecessary now to re-examine it. It is sufficient to say that the decisions in those cases must govern the present, and that the claim, by whomsoever presented, is now barred, and that there is no cause of action arising out of the services of Francis Martin now existing against the United States.



LEGAL REPRESENTATIVES OF FRANCIS CHANDONET.

[To accompany Bill H. R. No. 934.]

MARCH 3, 1859.—Ordered to be printed.

Mr. CLAWSON, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Francis Chandonet, an officer of the revolution, having had the same under consideration, report:

That from a return made and filed in the secretary of State's office at Albany, in the State of New York, by General Hazen and Colonel Singleton, and recorded in the balloting book of New York, at page 185, and duly certified by the secretary under the seal of said State, that the said Francis Chandonet was a Canadian officer of the rank of a lieutenant, and served in the revolutionary war, and that he received lands from the State of New York for services in said war, and the same quantity of land that other lieutenants received for like services in the same regiments. The balloting book referred to gives the lists of the officers who resigned, were deranged or reduced, killed or died in service, and the name of this officer is not on any of said lists. By a resolution of Congress of October 3, 1780, Hazen's regiment was to be continued on the establishment; and at or about this period the army was considerably reduced; but this Canadian regiment, called Congress regiment, was particularly excepted, and continued in service to the end of the war.

John Montey, who was a soldier in General Hazen's regiment, and certified to be a credible witness, testifies that he himself was a Canadian refugee, and served in General Hazen's regiment as a private in the revolutionary war to the end of the war, and for that service is now receiving a pension; that he was well acquainted with the said Francis Chandonet, who was a lieutenant in the same regiment in which he served, and as such officer served to the end of the war, and from the commencement of the revolution. The evidence of this witness is corroborated by reference to the pension rolls as to the fact of his being pensioned in 1819 for the services he claims to have performed in said regiment; and his testimony was admitted and received

without objection, and under a stipulation in the Court of Claims when the case was there.

In the opinion of your committee there can be no question but this officer served in the manner above stated. This is a claim for half-pay for life under the resolves of Congress of October 21, 1780, March 22, 1783, and March 8, 1785. They are as follows:

“RESOLUTION—IN CONGRESS, OCTOBER 21, 1780.”

“*Resolved*, That the officers who shall continue in the service to the end of the war shall also be entitled to half-pay during life, to commence from the time of their reduction.”

EXTRACT.—“RESOLUTION—IN CONGRESS, MARCH 22, 1783.”

“*Resolved*, That such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the amount of five years' full pay in money, or securities on interest at six per cent. per annum, as Congress shall find most convenient, instead of the half-pay promised for life by the resolution of the 21st day of October, 1780.” * * * * *

“RESOLUTION—IN CONGRESS, MARCH 8, 1785.”

“*Resolved*, That the officers who retired under the resolve of the 31st of December, 1781, are equally entitled to the half-pay or commutation with those officers who retired under the resolves of the 3d and 21st October, 1780.”

The first the committee have any knowledge of this claim being made is the Senate proceedings in the thirty-third Congress, when a petition was presented there, and referred to the Committee on Revolutionary Claims. A report and bill passed. There was no action on the bill in this House. On the Court of Claims being established the same claim was made to the Court of Claims on petition, setting out the foregoing resolutions, and testimony ordered and taken, and the case set down upon the calendar for trial.

It appears by the testimony filed, that the said Lieutenant Francis Chandonet died on the 6th day of April, A. D. 1810, and that from the books or revolutionary records in the Treasury Department he never received the commutation as such officer, nor did the records show that there was an officer of that name. It appears by a letter from the Secretary of War to the secretary of State of New York, when applied to for the records of service in the New York line, that they could not be furnished, because “all returns of the New York line made subsequent to the year 1781, and some others made previous to that period were consumed with the war office in November, 1800.”

The claim, when made to the Senate, was for the commutation; but the report and bill classed it in the second class, allowing the half-pay for life without deducting the commutation. But the case turned in the Court of Claims upon the statute of limitation, without express-

ing any opinion on the merits of the case; and their opinion, in the shape of an adverse report on the statute of limitation alone, was placed on the Calendar, (No. 116,) and on the 16th day of April, 1858, in Committee of the Whole on the Private Calendar, was taken up and concurred in, in the absence of the members who had charge of the case, and was intending to move its reference to an appropriate committee of this House.

Your committee considering the manner in which the case was disposed of, and looking into the merits and justice of the claim, and believing that it is not the intention of the House to take advantage of the statute of limitations in revolutionary claims for services performed, and believing that this claim is a just and meritorious one, have agreed to report a bill for the half-pay for life, and to recommend its passage.

The COURT OF CLAIMS submitted the following report:

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of—

AUGUSTIN DEMERS AND OTHERS, ADMINISTRATORS OF
FRANCIS CHANDONET, *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Claimant's brief.
3. Solicitor's brief.
4. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the
[L. s.] seal of said Court, at Washington, this seventh day of December, A. D. 1857.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable Judges of the Court of Claims of the United States:

The petition of Augustin Demers, of Rouse's Point, in the county of Clinton, in the State of New York, a relation and nephew (nearest of kin) of Francis Chandonet, deceased, begs leave respectfully to represent unto this honorable court: That he is interested, as nephew (nearest of kin) of the said Francis Chandonet, in a claim which the said Francis Chandonet had against the United States for services in the revolutionary war; that his interest in said claim arises from the consideration that he is the only surviving nearest of kin known to be living of the said Francis Chandonet, who died intestate at Chazy,

State of New York, on or about the sixth day of April, A. D. 1810, and in consideration of certain resolves of Congress hereinafter named.

And your petitioner further represents unto this honorable court, that the said Francis Chandonet was commissioned by Congress a lieutenant in the continental service in the revolutionary war, and served as such to the close, or until reduced or retired; that, by a resolution of Congress of October 21, 1780, it was provided that the officers who should continue in the service to the end of the war should be entitled to half-pay during life, to commence from the time of their reduction; and by a subsequent resolution of Congress of March 22, 1783, it was further provided that officers then in service, and that should continue therein to the end of the war, should be entitled to receive the amount of five years' full pay in money, or securities on interest at six per cent. per annum, as Congress should find most convenient, instead of half-pay promised for life by the resolution of the 21st of October, 1780; that, by a resolution of Congress of March 8, 1785, it was further provided that the officers who retired under the resolve of the 31st of December, 1781, are equally entitled to the half-pay or commutation with those officers who retired under the resolves of the 3d and 21st October, 1780.

And your petitioner further represents and shows to this court, that the commutation money, or half-pay, provided for in either of the foregoing resolves of Congress, has never been paid, but remains as a claim due to the said Francis Chandonet, next of kin to the said petitioner, from the United States.

And your petitioner further shows to this court, that he made application to Congress in 1854 for this claim, but what particular action was had thereon your petitioner is not informed, except a general act passed in 1855 in respect to commutation, which did not receive the signature of the President, and therefore failed to become a law.

Your petitioner, therefore, prays that this honorable court will examine into the justice and equity of the said claim, and report a bill to Congress providing for the payment thereof, together with the interest thereon, unto the heirs or legal representatives of the said officer, or such other order or bill as to your honors shall seem fit and proper to report in the premises.

And your petitioner, as in duty bound, will ever pray.

AUGUSTIN DEMERS.

Dated ROUSE'S POINT, *July 31*, A. D. 1855.

STATE OF NEW YORK, }
County of Clinton, } ss.

Augustin Demers, of Rouse's Point, in the county of Clinton, in the State of New York, being duly sworn, doth depose and say that the petition above, by him subscribed, contains the truth, according to the best of his information and belief.

AUGUSTIN DEMERS.

Sworn and subscribed before me, this 31st day of July, A. D. 1855.

JOHN BULLIS,
Justice of the Peace.

IN THE COURT OF CLAIMS.

AUGUSTIN DEMERS, claimant, *vs.* THE UNITED STATES.*Claimant's brief and points.*

I. The claim is founded upon a law of Congress. The consideration was for services in part executed, and to be continued to the end of the war; and the consideration of the contract being complied with by the officer, the obligation to enforce the law now rests with Congress.—(See resolution of Congress, May 15, 1778, Mayo & Moulton's "Pension and Bounty Lands," 3; Resolution of August 24, 1780, *ib.* 6; Resolution October 21, 1780, *ib.* 7; Resolution March 22, 1783, section 2, *ib.* 9; Resolution March 8, 1785, *ib.* 10; *ib.* in the introduction, pages xxi, xlii.)

II. The obligation is acknowledged by repeated precedents on the part of Congress.—(See Captain Gibson and Lieutenant Price's case in October, for relief of, March 2, 1833; Mayo & Moulton, 180; Lieutenant Wilson's case, act February 27, 1833, his heirs allowed seven years' half pay, with interest, per resolution of Congress, August 24, 1780; *ib.* 175.)

Doctor Axson's case, act June 15, 1832; commutation, with interest; *ib.* 163.

Captain McDuff's case, act April 2, 1830, section 2; land given him the same as to other captains in the continental line; *ib.* 148.

Lieutenant Jacob's case, act July 14, 1832; commutation and interest allowed him; *ib.* 167.

Colonel Harrison and Thomas Davenport's cases, act July 14, 1832; commutation and interest allowed to heirs; *ib.* 168.

Colonel Thornton's case, act February 9, 1833; commutation and interest to administrators, one-fourth to widow and residue distributed to persons entitled according to the laws of Virginia; *ib.* 173.

John Thomas and Peter Foster's cases, act March 2, 1833; commutation and interest as officers; *ib.* 178.

Richard Henley Courts' case, act March 2, 1833; commutation to his widow and interest; *ib.* 178.

Captain Triplit's case, act March 2, 1833; commutation and interest; *ib.* 179.

C. K. AVERILL,
Attorney for Claimant.

IN THE COURT OF CLAIMS.—No. 337.

FRANCIS CHANDONET'S ADMINISTRATOR *vs.* THE UNITED STATES.*Brief of Solicitor.*

The petitioner claims that his intestate was an officer of Hazen's regiment in continental service during the revolution, and served to the end of the war; and he claims the benefits of the resolution of October 21, 1780, granting half-pay for life to officers so serving.

I. The claim is barred by limitation under resolutions of November 2, 1785, (4 Journals, 603,) and July 23, 1787, (Ib. 762,) and the act of February 12, 1793, (1 Stat., 301.)

II. The evidence does not prove the service alleged. It consists of—

1st. The balloting book of New York. This proves (p. 185) that Chandonet was allowed land by New York, under the 14th section of the act of the legislature of that State, passed May 11, 1784. But under this section it was not necessary that the officer should have served for any given time. If at any time he had been an officer in the regiment he was entitled to the quantity of land which he received: 1,000 acres. That he is not on the lists of officers deranged, &c., (pp. 91 and 111,) proves nothing in favor of the claimant. The former list does not purport to embrace, and does not, in fact, embrace all officers deranged, as will be seen by comparing it with the list at page 111; and the list on page 111 by the “&c.,” does not purport to be confined to any class of officers, and in fact embraces officers who served to the end of the war, so that the absence of an officer's name from this list would imply that he did not serve to the end of the war, as much as it would imply that he was not deranged.

The balloting book is at best but secondary evidence. The land seems to have been granted upon a return made by Colonel Hazen, &c; that return is the evidence which should be produced, or its absence accounted for.

2d. The affidavit of John Montey, a soldier in the same regiment, made in 1854. This soldier is a general witness to prove the claims of some half a dozen officers. This witness is represented to be extremely old. On this account, and as the claim is barred, his deposition is admitted without putting the claimant to the expense of taking it over again, under the rules of the court. The only remark the Deputy Solicitor makes is as to the utter uncertainty of the memory of man as to services performed by another more than seventy years ago.

3d. The muster rolls and returns in the Pension Office, the 400 volumes of Washington papers in the State Department, which embrace numerous rolls of Hazen's regiment, and the records of the State of New York would certainly contain somewhere some evidence of the service of an officer who had served throughout the revolutionary war; but no evidence from any of these sources is produced.

JNO. D. McPHERSON,
Deputy Solicitor of the Court of Claims.

AUGUSTIN DEMERS AND ANOTHER, ADMINISTRATORS
OF FRANCIS CHANDONET, DECEASED.

BLACKFORD, J., delivered the opinion of the court.

The petition states that the intestate was a lieutenant in the revolutionary army, and served to the close of the war. That war ended in 1783.

The claim is for the half-pay of the intestate for life under the

resolution of Congress of the 21st of October, 1780, and for his commutation of five years' full pay under the resolution of Congress of the 22d of March, 1783, with interest.—(3 Journ. Old Cong., 538; 4 id., 178.) The petition states the intestate to have died in 1810.

No application is shown to have been made for this claim until 1854, when, the petition states application was made to Congress. It was therefore about seventy years after the claim is said to have accrued before a demand is even alleged to have been anywhere made. The intestate lived more than twenty-six years after the close of the war, and it does not appear that he ever presented the claim for payment; nor is there any cause shown for the delay.

The claim is barred by the following statute of limitations:

“*Be it enacted &c.*, That all claims upon the United States for services or supplies, or for other cause, matter, or thing, furnished or done previous to the fourth day of March 1789, whether founded upon certificates or other written documents from public officers, or otherwise, which have not already been barred by any act of limitation, and which shall not be presented at the treasury before the first day of May, 1794, shall forever be barred and precluded from settlement or allowance.” There are some exceptions in this act, but they do not affect this case.—(1 Stat. at Large, 301.)

The claimant, therefore, is not entitled to relief.

PEAY & AYLIFFE.

[To accompany J. R. No. 54.]

MARCH 3, 1859.—Ordered to be printed.

Mr. Wood, from the Committee on the Post Office and Post Roads,
made the following

REPORT.

The Committee on the Post Office and Post Roads, to whom was referred the petition of Messrs. Peay & Ayliffe, praying that the Postmaster General be authorized to pay them for extra mail services which they were compelled to perform as contractors for the transportation of the United States mails, on route No. 7503, from Little Rock to Washington, in the State of Arkansas, report :

That at the mail lettings for the southwestern section of the United States, in the spring of 1854, said petitioners were the lowest bidders, and became the contractors with the Post Office Department, to carry the mail on route No. 7503, from Little Rock to Washington, in the State of Arkansas, a distance of one hundred and thirty miles, and back, three times a week, in two-horse coaches, for the period of four years, from July 1, 1854, for the annual compensation of \$7,400.

The evidence and proofs adduced before the committee in support of their claim clearly establish the facts that the petitioners faithfully performed the said service to the full capacity of their contract, and to the entire satisfaction of the department. Not only so, but that they were compelled, by reason of the great amount of mail matter thrown upon said route for transportation, to perform a large amount of extra service beyond the means of conveyance afforded, which they had stipulated to provide by the terms of their contract with the department, at a heavy expense and greatly increased amount of labor and capital, by which they have suffered great loss. It is for this extra amount of service performed by them they are now asking at the hands of the government a reasonable and just compensation.

Of the reasonableness and justice of their demand the committee have no doubts. The evidence before the committee establishing the allegations of the petitioners of their having been compelled to perform a large amount of extra service under their contract is abundant, clear, and explicit. Among the numerous documents referred

to the committee, they find the most explicit testimony of the officers of the government, and others employed and residing on and along the line, and cognizant of the facts of which they testify, in proof of the facts alleged; and also voluntary communications, made to the Post Office Department by its special agent and by many of the most prominent citizens of the State, are on file among the papers in the case, all to the same effect. Among these proofs the postmasters at Colledgeville, Benton, Little Rock, Arkadelphia, Antoine, Fair Play, Washington, Graves, Rockport, Huddleston, Anville, and Midway, testify, in July, 1856, "that the mail was too heavy and bulky to be carried in two-horse coaches, and that the petitioners had been compelled to employ four-horse coaches to convey it from the beginning of the contract up to that time." In March, 1857, the drivers and agents upon the route, seventeen in number, testified under oath, each for the time he was employed and for the particular division of the road upon which he was employed, "that the mail matter carried over said route, on an average, weighed over one thousand pounds, and was very frequently as much as two thousand pounds."

Under date of June, 1856, John C. Reardon, postmaster at Little Rock, certified that the "average weight of the mails on said route was at least twelve hundred pounds, and in separate mails it was sometimes as much as two thousand pounds;" and adds, "that beside the counties in Southern and Western Arkansas, there are sixty-four counties in Texas, eleven counties in Louisiana, and all of the western portion of the Indian country, for which we make up mails direct, and that receive the largest portion, if not quite all, their mail matter through this route."

B. C. Harley, special mail agent, reported to the department, under date of July 18, 1856, "that four-horse service is required for forty miles of the route; that the mails are very heavy, and he is informed that the contractors have been running four horses for nearly two years;" and in March, 1857, the same special agent, having been called upon by the contractors, replies that he does "not hesitate to say that the present grade of service is wholly inadequate. The tri-weekly arrival of a large quantity of mail matter, in four-horse post coaches, from Napoleon *via* Pine Bluff, and also the tri-weekly arrival from Aberdeen by similar service, very generally furnished a sufficiency of mail matter for your route to require the service to be performed in four-horse coaches tri-weekly, or six times a week in two-horse coaches."

The fact alluded to in the above extract from the statement of the special agent of the department, in connexion with the service from Napoleon and Aberdeen, is one of great importance to a proper understanding of the merits of this case. These two great through mails—the one from Napoleon *via* Pine Bluff, on the Arkansas river, to Little Rock, three times a week by steamboats and four-horse coaches, and the other from Napoleon *via* Aberdeen, on White river, to Little Rock, in steamboats and by four-horse coaches, three times a week, the service on each of these lines being performed in forty-eight hours, on alternate days, making the service six times a week from Napoleon, on the Mississippi river, to Little Rock, on two great and converging lines by a

high grade of service, which was required to connect with service in two-horse coaches, three times a week—delivered an amount of mail matter at the eastern end of the route over which the petitioners contracted to carry the mails, far beyond the capacity of the grade of service which they engaged to perform. The whole of the mails thus carried into Little Rock on those two lines by a high grade of service, (except the small portion for delivery at the way post offices and for side transportation,) had to be carried over the route from Little Rock to Washington; whence, as before stated, the whole of southwestern Arkansas, northwestern Louisiana, some sixty odd counties in Texas, and the Indian country, are supplied with their mail matter. The simple statement of these facts, without comment or argument by the committee, would seem to be sufficient to convince every candid mind of the total inadequacy for the grade of service contracted for, and required by the necessities of the public interest. But the testimony before the committee, independent of these great and prominent facts presented by the records and files in the department, is voluminous, clear, and explicit to that point, and leaves no room for doubt.

In the advertisement for carrying the mail in the State of Arkansas in the spring of 1854, bids were “invited to perform six times a week service.” Bids in accordance with the invitation were made and recorded, and were before the Postmaster General at the time of his acceptance of the bid by the memorialists for tri-weekly service in two-horse coaches. They discovered at once, at the commencement of their service under their contract, that the Postmaster General had accepted a mode of service wholly insufficient to convey the entire mails thrown upon them at Little Rock, and petition after petition was forwarded to the department, accompanied by letters from the special mail agent, United States senators and representatives; all the postmasters along the line; a joint memorial by the legislature of the State of Arkansas, and from the most distinguished citizens of the State, protesting against this inferior mode of service, and recommending and urging immediate relief and change of the mode of service.

Governor Conway, in a letter to Hon. R. W. Johnson, under date of January 5, 1856, after adverting to the badness of the roads, the inadequacy of the service, and the weight of the mails, says:

“Some sixteen or eighteen years since, before the annexation of Texas to the United States, and before the establishment of the route from Washington to Shreveport, and when the region of country now supplied with mails through the route from Little Rock to Washington was but very sparsely settled, the Postmaster General deemed it to the public interest to have the mail carried from Little Rock to Washington in *four-horse coaches*. Certainly, after the lapse of sixteen or eighteen years, and the vast increase of population, not only within our former boundary, but in the State of Texas interested in obtaining much of their mail matter by this route, *there can be no question as to the public necessity of having four-horse coaches run upon said route*. The present contractors, Messrs. Peay and Ayliffe, are energetic and enterprising, and, to meet the necessities of the business, have made considerable expenditure to faithfully comply with their

contract, by the delivery of the mails within the schedule time. *I think the contractors are in equity and justice entitled to extra compensation for the increased service already rendered, and I hope that you will use your best exertions in this behalf.*"

Senator Johnson, on filing one of Governor Conway's letters at the department, endorses thereon: "I now choose to file this letter. *It comes from a man that never prevaricates, and from an economist as strict as George Jones.*"

On filing a memorial of a large number of citizens of Arkansas in favor of improving the grade of service on this route, Senator Johnson, on the 26th March, 1855, endorsed it as follows:

"Fifteen or eighteen years ago, we had a four-horse service on this route. You now carry in two. *I knew it was wrong, and protested at the time the bid was accepted.* I now unite in urging an improvement as asked for."

To all these petitions, remonstrances, appeals, and to all the accumulation of facts from the officials of the government, from distinguished citizens, and from the legislative authority of the State, the only answer returned by order of the Postmaster General was, that he "had no power under the law to change the mode of service from that of two to four-horse coaches, without re-advertising the route," and this was not done until February 17, 1857. The lowest bid received for service three times a week in four-horse coaches was \$10,500 per annum. Before, however, the time of deciding on the bids made under the special advertisement had elapsed, a change of administration had taken place, and the present Postmaster General, Hon. Aaron V. Brown, being satisfied from reliable and satisfactory evidence that the contractors required immediate relief, *demanding by the great weight and bulk of the mails*, gave them, within the restrictions of the law, all that could be done, by improving the grade of service from three times a week to six times in two-horse coaches. This gave them comparative relief from the 14th April, 1857, to the end of their contract. Comparative, because by the establishment of new routes, not contemplated by the contractors at the time of their bid, and by the modification and change of the schedule time of old routes, the mails transported upon said route, as compared in weight at the beginning of the contract, had more than doubled, and two-horse coaches could no better carry the whole by dividing it into six times a week than they could previously do by three times a week. This tardy and reluctant relief granted by the Postmaster General, while it fully acknowledges the justice and legality of the claim of the petitioners for relief, covering the whole period of their contract, for the proof is as clear as to its necessity prior as it is subsequent to the 14th April, 1857, was consequently wholly insufficient at the time it was ordered to meet the demands of the service, and, as a proof of that fact, they were compelled to run four horses to the end of their contract.

Upon this presentation of the facts in the case, and of which there is no room for doubt in the minds of the committee, the question fairly presents itself as to the duty of government in the premises. The committee are clearly of the opinion that, *for so much of the mail as was over and above the means of conveyance which they contracted to provide,*

the contractors are legally and equitably entitled to compensation, and the government is bound by every consideration of justice and law to pay them. The Postmaster General has, in the most explicit manner, acknowledged the right and justice of their claim by doubling the service, under the restrictions of existing law, on the 14th April, 1857, but the Postmaster General can only increase the grade of service, and the corresponding allowance therefor for service which is *thereafter* to be performed ; but where the contractor, from the necessity of the case, to enable him to carry all the mail matter which is thrown upon his line, whether within the limits of his contract or not, has been compelled to increase his stock and incur heavy additional expense, Congress has reserved to itself the authority alone to make compensation therefor.

As the precise amount of extra service performed by the petitioner is a matter to be determined and settled by close investigation and scrutiny, the committee are of opinion that the Post Office Department would be the proper authority to make such investigation; they therefore report a joint resolution authorizing the Postmaster General to adjust the accounts of the said contractors and allow them for any extra service which they can show they were *compelled* to perform in the transportation of the entire amount of mail matter on said route, No. 7503, the same rates *pro rata* per annum which they received under their contract for the carrying the mails tri-weekly in two-horse coaches, and recommend its passage.

The first part of the history of the world is the history of the creation of the world and the history of the world from the creation of the world to the present time. The second part of the history of the world is the history of the world from the present time to the future. The third part of the history of the world is the history of the world from the future to the end of the world.

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NEW ALBANY AND SALEM RAILROAD COMPANY.

[To accompany Joint Resolution No. 55.]

MARCH 3, 1859.—Ordered to be printed.

Mr. Wood, from the Committee on the Post Office and Post Roads,
made the following

REPORT.

The Committee on the Post Office and Post Roads, to whom was referred the memorial of the New Albany and Salem Railroad Company, have had the same under consideration, and ask leave to report as follows:

From the evidence presented to the committee, it appears that the petitioners claim extra compensation for transporting an extra amount of mail matter over that part of their road between Lafayette and Michigan City, Indiana, a distance of ninety-two miles.

That the Terre Haute and Richmond Railroad Company, which had been transporting the great St. Louis mails between Indianapolis and Terre Haute, (No. 14,504,) threw them down April 1, 1856; whereupon a portion of that mail was then sent from Indianapolis by way of Chicago, and, in its transit, it passed over the Lafayette railroad from Indianapolis to Lafayette, thence to Michigan City over a part of the New Albany and Salem railroad, and that, after considerable investigation, the Postmaster General, on the 13th of August, 1857, caused the following order to be made:

“In consideration of the increased amount of mail matter carried over that part of this road between Lafayette and Michigan City, by reason of the Terre Haute and Richmond Railroad Company throwing down the mails on route 14,504—Indianapolis to Terre Haute—allow the New Albany and Salem Railroad Company fifty dollars per mile per annum additional for the distance between Lafayette and Michigan City, ninety-two miles, from this date.”

It further appears that these contractors have been paid accordingly; but the Postmaster General felt himself debarred by law from paying this company for the service performed by them prior to the date of the above order.

It also appears that this extra mail service was performed during the period of one year and one hundred and thirty-five days, that is,

say, from the 1st of April, 1856, to the 13th of August, 1857, and that the *pro rata* amount due the contractors for this extra service would be \$6,369 86.

The committee therefore recommend that a joint resolution be passed for the relief of the aforesaid contractors, and that the Postmaster General be authorized and directed to pay them, for the period above named, such an amount as would be *pro rata* on the amount subsequently paid them by the Post Office Department.

REPORT.

The Committee on the Post Office and Post Roads, to which was referred the memorial of the New Albany and Salem Railroad Company, have the honor to report as follows:

From the evidence presented to the committee, it appears that the contractors claim an extra compensation for transporting an extra amount of mail matter over that part of their road between Lafayette and Michigan City, Indiana, a distance of ninety-two miles.

That the Terre Haute and Richmond Railroad Company, which has been transporting the great St. Louis mails between Indianapolis and Terre Haute, (No. 11,504) threw them down April 1, 1857, whereupon a portion of that mail was thrown over from Indianapolis by way of Chicago, and, in transit, it passed over the Lafayette railroad from Indianapolis to Lafayette, thence to Michigan City over a part of the New Albany and Salem railroad, and that, after consideration of the Postmaster General, on the 13th of August, 1857, he issued the following order to be made:

"In consideration of the increased amount of mail matter carried over that part of the road between Lafayette and Michigan City, by reason of the Terre Haute and Richmond Railroad Company throwing down the mails on route No. 11,504—Indianapolis to Terre Haute—allow the New Albany and Salem Railroad Company fifty dollars per mile per annum additional for the distance between Lafayette and Michigan City, ninety-two miles, from 1856 to 1857."

It further appears that these contractors have been paid accordingly; but the Postmaster General has himself admitted by law that paying this amount for the service performed by them prior to the date of the above order.

It also appears that this extra mail service was performed during the period of one year and one hundred and thirty-five days, during

ABEL GILBERT AND WILLIAM GERRISH.

[To accompany Joint Resolution H. R. No. 56.]

MARCH 3, 1859.—Ordered to be printed.

Mr. JACKSON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Messrs. Gilbert & Gerrish, asking to be paid back certain advances made to the government of the United States on account of the judiciary of Utah, report:

That they are satisfied, from an examination of the papers and proofs submitted to them, that Messrs. Gilbert & Gerrish, merchants residing in Salt Lake City, did in good faith pay to the marshal of said Territory a large sum of money, amounting to something over twenty thousand dollars, and did accept the drafts of said marshal on the treasury of the United States, which drafts were dishonored in consequence of an order from the proper department to the marshal not to draw any more on the treasury, of which order, the memorialists, Gilbert & Gerrish, were ignorant. Your committee further find that there now stands to the marshal's credit the sum of twenty-four thousand six hundred and fifty-eight dollars and ninety-seven cents; that the marshal does not claim that sum, or any part, but acknowledges that said money was never advanced by him individually, but by said memorialists, in the manner hereinbefore pointed out. The committee, therefore, without considering the question of the liability of the government to any greater extent than to the amount of money now standing to the credit of the said marshal of Utah, recommend the adoption of the accompanying resolution.

A. DUDLEY MANN.

[To accompany J. R. No. 58.]

MARCH 3, 1859.—Ordered to be printed.

Mr CLAY, from the Committee on Foreign Affairs, made the following

R E P O R T .

The Committee on Foreign Affairs, to whom was referred the communication of the Secretary of State, dated December 21, 1858, relative to the diplomatic services of A. Dudley Mann, have had the same under consideration, and report:

Mr. A. Dudley Mann's diplomatic services commenced March 27, 1846, and terminated July 13, 1852.

During this time Mr. Mann was employed on four different missions. The first to Hanover, Oldenburg, and the two Mecklenburgs, which lasted eight months and nine days. The second to the States of the Germanic Confederation, or the more important ones thereof, (wherein the United States had no minister,) which lasted one year and twenty-four days. The third to Hungary, which lasted three months and twenty-five days. The fourth to Switzerland, which lasted two years and twenty-nine days. He was, consequently, in a period of six years, two months, and eighteen days, employed four years, three months, and fifteen days.

He received for his first mission, \$3,816 45; for his second, \$6,199 29; for his third, \$1,940; for his fourth, \$5,394 81. Total amount drawn from the treasury on account of all his missions, \$17,350 59.

While engaged in this service he crossed the Atlantic eight times, thus travelling on sea at least 25,000 miles; on land and otherwise on water he travelled at least 25,000 more.

In his second, third, and fourth missions he was accompanied by his son, who acted as his secretary, but for whose services nothing whatever was charged, valuable as they were in translating such documents as he met with abroad, and other publications, from German, French, Spanish, and Italian, as Mr. Mann conceived would be interesting to his government.

He negotiated three treaties, all of which were duly ratified, and are at present in force. He might, therefore, long ago have justly laid claim to three outfits of \$4,500 each, according to the usages of

Congress in such cases in the instances of Mr. Niles, Mr. Schenck, Mr. Pendleton, and others ; but he has made no such application.

He departed upon his mission as soon as he was appointed, and terminated them voluntarily when he accomplished the objects for which he was commissioned.

In opening the negotiation with Switzerland it was proposed by the President to appoint Mr. Mann chargé, and ask Congress for an outfit and an appropriation for a year's salary ; but Mr. Mann preferred a special to a regular mission, and the more so as the usual attendant delay consequent upon the establishment of a regular mission might defeat the objects desirable to all and particularly cherished by this government. The mission was successful. A treaty was formed by Mr. Mann with the Swiss plenipotentiaries, the first general convention ever entered into by Switzerland, and was immediately ratified by the Swiss Chambers, and it indicated to Europe that as strong fraternal feeling can exist between republics as monarchies, without entangling alliances. Some time occurred before this treaty could be sent home and ratified by the Senate, and Mr. Mann had necessarily to await its return and ratification. This was accomplished finally and the treaty proclaimed as the law of the land by General Pierce. For a portion of the time only Mr. Mann was compensated ; for ten months and seventeen days he has received no compensation, to which he is justly entitled, amounting to \$3,962 50.

The committee therefore report a resolution in his favor.

The committee deem it but just to add that, in their opinion, to this amount is justly due to Mr. Mann an outfit of \$4,500. His correspondence with the State Department was called for by the Senate in 1854, but it was then deemed inexpedient to communicate it, in consequence of its confidential character. Until a propitious period arrives for its publication, which possibly may not occur before one or more of the prominent potentates of continental Europe shall have descended from power or ceased to exist, the application is delayed.

Your committee would further add that this matter of just compensation to Mr. Mann for services rendered has been delayed, not by any fault of his, nor perhaps of the government, but from peculiar circumstances. Soon after this term of service had expired Mr. Mann was appointed by the President, by and with the advice and consent of the Senate, without any solicitation on his part or that of his friends—for he was abroad at the time—Assistant Secretary of State. Motives of delicacy restrained any action on his part in the premises during his relations with the State Department. Nor is the matter now brought before Congress by any memorial or action of Mr. Mann, but by the State Department, under the direction of the President, to whom his services are best known and appreciated.

DEPARTMENT OF STATE,
Washington, December 21, 1858.

SIR : The former diplomatic services of A. Dudley Mann, while engaged on various special and confidential missions, not having been adequately compensated, as has been explained to the satisfaction of

the President, I am directed to call your attention to the subject, in order that Congress may, if it shall think proper, authorize this department, by which he was from time to time employed under different recent administrations, to allow and pay him, out of the foreign intercourse fund, a just and fair consideration for those services.

I have the honor to be, sir, your obedient servant,

LEW. CASS.

Hon. JOHN S. PHELPS,

*Chairman of the Committee of Ways and Means,
House of Representatives.*

The first part of the document discusses the importance of maintaining accurate records of all transactions. It is essential for the company to have a clear and concise system in place to ensure that all data is properly recorded and stored. This will allow for easy access and retrieval of information when needed.

The second part of the document outlines the various methods used to collect and analyze data. This includes both qualitative and quantitative research techniques. The goal is to gather as much information as possible to better understand the market and the needs of our customers.

The third part of the document provides a detailed overview of the company's current financial status. This includes a breakdown of revenue, expenses, and profit. It also includes a comparison of our performance against industry benchmarks to provide context for our results.

The fourth part of the document discusses the various challenges we face in our current market environment. These include changes in consumer behavior, increased competition, and fluctuating economic conditions. We will need to adapt our strategies to overcome these challenges and maintain our competitive edge.

The fifth part of the document outlines our strategic goals for the upcoming year. These include increasing our market share, improving our customer satisfaction, and reducing our operational costs. We will need to implement a series of initiatives to achieve these goals and ensure the long-term success of the company.

The sixth part of the document provides a detailed overview of our marketing and sales strategies. This includes a breakdown of our advertising budget, our sales team's performance, and our overall approach to customer acquisition and retention. We will need to continue to refine these strategies to ensure they are effective and efficient.

The seventh part of the document discusses the various risks we face in our current market environment. These include changes in consumer behavior, increased competition, and fluctuating economic conditions. We will need to develop a risk management plan to identify and mitigate these risks and ensure the stability of the company.

The eighth part of the document outlines our future plans and vision for the company. This includes a discussion of our long-term goals, our commitment to innovation and growth, and our overall approach to sustainable business practices. We will need to continue to work hard to achieve these goals and ensure the long-term success of the company.

INDIAN DEPREDATIONS IN TEXAS.

[To accompany Joint Resolution H. R. No. 59.]

MARCH 3, 1859.—Ordered to be printed.

Mr. BRYAN, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the petition of citizens of Texas, praying for indemnity for losses sustained by them from depredations of Indians, report :

That it appears, from evidence before the committee, that such losses have been sustained by the citizens referred to by the depredations of the Kickapoo, Wichita, and Comanche Indians; but as the evidence is not as complete as it might be made, and as some of the steps required by the non-intercourse act had not been taken, and as some of the persons who have suffered from the Indians have not presented their claims, the committee recommend the passage of the accompanying joint resolution authorizing the Indian agents of Texas to collect the testimony upon such claims, and report upon the facts and evidence to the Secretary of the Interior.

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House documents

Bd.: [119,d,1.] 1858/59 (1859) = Congress 35, Sess. 2

Washington, DC 1859

Am.b. 3040-119,d,1

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